

**United States District Court  
for the  
Western District of Tennessee**

**LOCAL RULES**

Effective \_\_\_\_\_, 2010

[www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov)

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**UPDATES FROM CIVIL & CRIMINAL  
LOCAL RULE COMMITTEES ARE CODED AS:**

■ text recommended for deletion

■ text recommended for addition

■ no change to current rule

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE

LOCAL RULES  
CIVIL

<b>LR 1.1</b>	<b>Scope of the Rules</b>
<b>LR 3.1</b>	<b>Civil Cover Sheet</b>
<b>LR 3.2</b>	<b>Electronic Case Filing Procedures</b>
<b>LR 3.3</b>	<b>Commencement of Actions - Division of Court</b>
<b>LR 4.1</b>	<b>Summons and Service of Process</b>
LR5.1	Adoption of Electronic Case Filing (“ECF”)
LR5.2	<b>Non-Electronic Filing and</b> Service
<del>LR5.3</del>	<del>Electronic Service of Documents Between Parties</del>
LR6.1	Time <sup>1</sup>
<del>LR7.1</del>	<del>Extensions of Time to Respond to Claims or Motions</del> <b>General Format of Papers Presented for Filing</b>
<del>LR7.2</del>	<del>Motions in Civil Cases</del>
LR7.3	Trial Memoranda
<b>LR 7.3</b>	<b>Motion for Revision of Interlocutory Orders</b>
<del>LR7.4</del>	<del>Continuances</del>
LR11.1	Signatures
<b>LR 12.1</b>	<b>Motions to Dismiss</b>

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<sup>1</sup> Pursuant to the Statutory Time Period Technical Amendments Act of 2009 the time deadlines contained in the following Local Civil Rules were amended: LR7.2(a)(2); LR7.3; LR72.1(g)(1) & (2); LR77.1(d); LR83.1(b)(2); and LR83.3(a)(4) & (8).

LR16.1	<del>Pretrial Conferences; Alternative Dispute Resolution</del> <b>Fed. R. Civ. P. 16 Pretrial and Scheduling Conferences and Orders</b>
LR 16.2	<b>Pretrial and Scheduling Conferences: Alternative Dispute Resolution</b>
LR 16.3	<b>Trial Memoranda</b>
LR 16.3	<b>Trial Continuances</b>
LR 23.1	<b>Designation of “Class Actions”</b>
LR26.1	Discovery Procedures in Civil Cases
LR 43.1	<b>Procedures at Hearings and Trials</b>
LR 45.1	<b>Subpoenas in Civil Actions</b>
LR 47.1	Juries
LR 52.1	<b>Post-trial Proposed Findings of Fact and Conclusions of Law -- Non-Jury Cases</b>
LR54.1	Payment of Judgment and Costs in Civil Cases
LR 56.1	<b>Motions for Summary Judgment</b>
LR 65	<b>Injunctions</b>
LR67.1	Investment of Registry Funds
LR72.1	<del>United States Magistrate Judges</del> <b>Rules Governing Duties of and Proceedings Before Magistrate Judges</b>
<del>LR77.1</del>	<del>Places of Holding Court</del>
LR 77.2	<b>Clerk of the Court</b>
LR 79.1	<b>Removal of Court Files</b>

- LR 80.1**      **Court Reporters and Transcripts**
- LR83.1      ~~Attorneys~~  
**Bankruptcy Appeals**
- LR83.2      ~~Civil Pro Bono Panel for Pro Se Indigent Parties~~  
**Photographing, Broadcasting and Telephony**
- ~~LR83.3~~      ~~Assignment of Cases~~
- LR83.4      ~~Photographing, Recording, and Broadcasting~~  
**Attorneys – Admission**
- LR83.5      ~~Contacting Judges and Court Personnel~~  
**Attorneys - Withdrawal from Representation**
- LR83.6      ~~Citations of Cases and Statutes~~  
**Contacting Judges and Court Personnel**
- LR83.7      ~~Submission of Court Papers~~  
**Civil Pro Bono Panel for Pro Se Indigent Parties**
- LR83.8      ~~Settlements: Notice~~  
**Assignment of Cases**
- ~~LR83.9~~      ~~Disposition of Exhibits and Depositions~~
- LR 83.13**      **Settlements - Notice**

## LOCAL RULES

### CRIMINAL

LCrR12.1 Motions in Criminal Cases<sup>2</sup>

LCrR156.1 Discovery Procedures in Criminal Cases

~~LCrR24 Post trial Interviewing of Jurors in Criminal Cases~~

LCrR32.1 Procedural Steps for Sentencing

~~LCrR32.2 Probation Office Records~~

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<sup>2</sup> Pursuant to the Statutory Time Period Technical Amendments Act of 2009 the time deadlines contained in the following Local Criminal Rules were amended: LCrR12.1(c); LCrR15.1(a) - (c); and LCrR32.1(c), (d) & (g).

## CIVIL

### LR 1.1

#### SCOPE OF THE RULES

- (a) Title and Citation. These rules shall be known as the Local Rules of the United States District Court for the Western District of Tennessee. They shall be cited as LR \_\_\_\_ for civil rules and LCrR \_\_ for criminal rules.
- (b) Effective Date: Transitional Provision. These rules become effective on \_\_\_\_\_, and shall govern all actions and proceedings pending on or commenced after they take effect, except to the extent, in the opinion of the Judge to whom the case is assigned, their application in an action or proceeding pending on that date would not be feasible or would work an injustice.
- (c) Scope of Rules: Construction. These rules supersede all previous rules promulgated by this Court or any Judge of this Court.
- (d) Reference to Clerk. The term “Clerk” as used herein refers to the Clerk of the Court, unless specifically stated otherwise.
- (e) Deviation from Local Rules. By order entered in any case, the Court may deviate from any provision of any Local Rule of this Court, when appropriate for the needs of the case and the administration of justice.

### LR 3.1

#### CIVIL COVER SHEET

Every complaint or other document initiating or removing a civil action or proceeding, except pro se cases, shall be accompanied by a completed civil cover sheet. The civil cover sheet shall be submitted on a Form JS-44 obtained from the Clerk or from the Court’s website, [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).

In section VIII of the JS-44 form, a “related case” is one that: (1) relates to property involved in an earlier numbered case, (2) arises out of the same transaction or occurrence and involves one or more of the same parties as an earlier numbered case, or (3) involves the validity or infringement of a patent at issue in an earlier numbered case.

### LR 3.2

#### ELECTRONIC CASE FILING PROCEDURES

The procedures for electronic filings are set forth in the Electronic Case Filing Policies and Procedures Manual, which is at APPENDIX A to these Rules.

**LR 3.3**  
**COMMENCEMENT OF ACTIONS - DIVISION OF COURT**

- (a) Divisions of Western District (See 28 U.S.C. §123).  
The Eastern Division of the Western District shall be comprised of the following counties: Benton, Carroll, Chester, Crockett, Decatur, Dyer, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry and Weakley.  
  
The Western Division shall be comprised of the following counties: Fayette, Lauderdale, Shelby and Tipton.
- (b) Actions shall be commenced in the division of the District Court set forth in 28 U.S.C. § 123, as follows:
- (1) A civil action against a single defendant residing in the District may be brought in either the division where the defendant resides, or in the division in which the claim arose or the event complained of occurred.
  - (2) A civil action against multiple defendants may be brought in any division of the District in which one of the defendants resides, or in the division in which the claim arose or the event complained of occurred.
  - (3) If no defendant resides in the District, the action shall be filed in either the division in which any plaintiff resides, or the division in which the claim arose or the event complained of occurred.
  - (4) For purposes of this rule, a corporation shall be deemed to be a resident of the division in which it has its principal place of business in the District, if it has a place of business in the District.
  - (5) For purposes of this rule, the United States, federal agencies, the State of Tennessee, and agencies of the State are deemed non-residents of the District. State or federal officials joined solely in their official capacities are deemed residents of the division in which they perform their duties.
  - (6) Notwithstanding the above provisions, any action seeking to establish an interest in real property shall be filed in the division in which the real property is located.
- (c) The filing of an action in an improper division shall not constitute grounds for dismissal of the action. If an action is brought in an improper division, the Court shall transfer the action to a proper division upon motion of a party. The Court also may, in its discretion, transfer the action to another division for the convenience of the Court, parties, witnesses, or in the interest of justice.

- (d) All civil cases shall be tried in the division in which the case is filed unless the Court transfers the case to another division.
- (e) Western District - Dyersburg. Counsel for a party to a civil action pending in the Eastern Division who desire that the action be tried at Dyersburg must file, within 14 days after answers have been filed to all asserted claims, a request that the action be placed on the Dyersburg trial docket. The request must set out the reasons therefor and must contain a certificate that it has been served on all parties to the action. A response to the request must be filed not later than 14 days after the request is served, and it must state the reasons for objection to the request, if any, and must contain a certificate that it has been served on all parties. Requests and responses shall be separately filed and shall not be included in other pleadings. The Court will rule on such requests without argument. The Court on its own motion may place civil cases on the Dyersburg docket from either division.

**LR 4.1**  
**SUMMONS AND SERVICE OF PROCESS**

- (a) Preparation of Summonses. A party filing a complaint or any other pleading that requires the issuance of a summons, except for pro se plaintiffs, shall prepare and submit the summons to the Clerk. The Clerk shall issue the summons in accordance with the Federal Rules of Civil Procedure.
- (b) Summonses in Pro Se Cases. The Clerk will issue summonses in pro se cases if warranted following screening under 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A for frivolity, failure to state a claim, and defendants who are immune from money damages.

**LR 5.1<sup>3</sup>**  
**ADOPTION OF ELECTRONIC CASE FILING (“ECF”)**

- (a) Effective January 1, 2006, all papers in all cases active as of that date or commencing on or after that date, including all civil, criminal and miscellaneous cases, shall be filed electronically through the Court’s Electronic Case Filing (“ECF”) system. Exceptions to this mandatory electronic filing shall be only upon order of the Court pursuant to motion for good cause shown or shall be those exceptions provided under Court policy, which generally relate to grand jury matters, law enforcement activities, and investigatory proceedings.

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<sup>3</sup> LR 5.1 adopted pursuant to Administrative Order 2005-26 in connection with implementation of the Court’s Electronic Case Filing system effective January 1, 2006.

- (b) Mandatory electronic filing also applies to case-initiating papers, such as civil complaints, criminal complaints, indictments, informations and other documents filed with the Court that creates a new case and new case number on the Court's docket. An appeal to the Court of Appeals is also considered to be a case-initiating paper. Reference is made, however, to the need to effectuate traditional Rule 4 service when initiating a new case despite such electronic filing (See, Local Rule 5.2 on "Service").
- (c) The Clerk of Court is hereby authorized and instructed to promulgate, periodically update and administer written policies and procedures for the effective implementation and creation of the Court's Electronic Case Filing System, which shall be set forth in the Court's Electronic Case Filing Policies and Procedures Manual.
- (d) This Local Rule supersedes any and all inconsistent provisions in existing Local Rules, such as, for example only, the requirement of filing complaints, pleadings and other papers (See, Local Rule 83.7).

#### **LR5.2<sup>4</sup>**

#### **NON-ELECTRONIC FILING AND SERVICE FOR PRO SE PARTIES**

~~(a) Fed. R. Civ. P. 5(b) and Fed. R. Crim. P. 49(b) do not permit electronic service of process for purposes of obtaining personal jurisdiction, i.e., Rule 4 service. Therefore, service of process under Rule 4 must be effectuated in the traditional manner and cannot be completed electronically through the Court's Electronic Case Filing system ("ECF") or through some other electronic means.~~

(a) Filing. If a party is exempt from Electronic Case Filing (ECF) by virtue of the Court's ECF Manual (APPENDIX A) or by Order of the Court, the original of all pleadings and papers (including memoranda of law) to be filed, other than proposed orders, shall be filed with the Clerk. The original of a proposed order shall be delivered to the Clerk for transmission to the appropriate judge.

~~(b) Whenever a court document is filed electronically, in accordance with this Court's Electronic Case Filing Policies and Procedures Manual, the ECF system will generate a Notice of Electronic Filing ("NEF") to all Filing Users associated with that case, to the Judge to whom that case is assigned and to other individuals designated as NEF recipients in that case.~~

(b) Service. The certificate of service required by Fed. R. Civ. P. 5(d) shall identify by name the person served, place served, method of service and date of service.

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<sup>4</sup> L.R. 5.2 adopted pursuant to Administrative Order 2005-26 in connection with implementation of the Court's Electronic Case Filing system effective January 1, 2006.

~~(c) As defined in this Court's Electronic Case Filing Policies and Procedures Manual, a "Filing User" is a registered attorney who has a district court-issued login and password to file papers electronically over the Internet into the Western District of Tennessee.~~

~~(d) If the recipient of the NEF generated by such electronic filing is a Filing User, the NEF shall constitute service of the document filed as if by first class mail, and if two or more attorneys appear on behalf of a party, service on one shall be deemed sufficient, unless otherwise ordered by the Court or required by law.~~

~~(e) The generation of an NEF notwithstanding, a Certificate of Service on all parties entitled to service or notice is still required where a party files a paper electronically. This Certificate of Service must state the manner in which service or notice was accomplished on each party so served, and such Certificate of Service may be included as part of the document served rather than as a separate filing. A sample of such Certificate of Service is included in this Court's Electronic Case Filing Policies and Procedures Manual.~~

~~(f) Any party who is not a Filing User is entitled to a paper copy of any document filed electronically, and service of such paper copy must be made according to the Federal Rules of Civil and Criminal Procedure and any applicable Local Rules.~~

### **LR5.3**

#### **~~ELECTRONIC SERVICE OF DOCUMENTS BETWEEN ATTORNEYS~~**

~~Attorneys practicing in this District who are also ECF registrants may, but are not required to, utilize electronic service of documents when sending case-related materials not otherwise filed through the Clerk's Office to opposing counsel. An example of material exchanged between attorneys but not directly filed through the Clerk would be discovery documents and data. If an attorney elects to use electronic service of such materials it must be effectuated by email attachment sent to opposing counsel's email address. Any attorney registered in the Clerk's ECF system is hereby mandated to accept such electronic service of case-related documents in lieu of the delivery of print-outs or other physical copies. Non-ECF attorneys, as well as self-represented litigants, must be served print-outs or other physical copies of such case-related materials in the traditional manner. The Clerk will develop and implement policies and procedures governing the use of electronic service under this Local Rule.~~

### **LR6.1**

#### **TIME**

~~Time shall be computed under these rules as specified in Fed. R. Civ. P. 6.~~

- (a) Computation of Time. Fed. R. Civ. P. 6 shall apply in computing any period of time prescribed or allowed by these Local Rules.

## LR7.1

### ~~EXTENSIONS OF TIME TO RESPOND TO MOTIONS~~ GENERAL FORMAT OF PAPERS PRESENTED FOR FILING

- ~~(a) Extensions of Time to Respond to Motions. Extensions of time to respond to motions shall be granted only for good cause and by motion pursuant to LR7.2 and will not be granted by stipulation.~~
- (a) All pleadings, motions, and other papers presented for filing shall be on 8-1/2 by 11 inch white paper, typewritten, with one-inch margins on all sides, and shall contain the name, address, telephone number, email address, if any, and the Board of Professional Responsibility number (or similar number, if any, from the attorney's state of licensure) of the attorney filing the document. To the extent a *pro se* party does not have access to 8-1/2 by 11 paper and/or typewriting capabilities, such party is required to make every effort to comply with this rule as closely as possible. Any handwritten documents must be in a form that is legible to the Clerk, the Court, and opposing counsel.
- (b) Lines must be double-spaced, except that quotations may be indented and single-spaced and headings and footnotes may be single-spaced. Font size (for footnotes as well as the body of the document) shall be no smaller than 12 point type.
- (c) If demand for jury trial under Fed. R. Civ. P. 38(b) and (c) of the Federal Rules of Civil Procedure is made in the complaint or answer, such demand shall be contained in the last paragraph thereof. The phrase "JURY DEMAND" shall appear immediately opposite the style of the case on the first page of the pleading and all subsequent filings.

## LR7.2

### MOTIONS IN CIVIL CASES

- (a) Filing, Service and Response.
- ~~(1) Motions. (See Section II(B)of the ECF Attorney User Manual ) The clerk shall accept for filing only those motions in civil cases that are accompanied by a supporting memorandum of facts and law, and (except in the case of an ex parte motion) a certificate of service of the motion and memorandum upon all other parties to the action. The motion shall contain a brief statement of its bases. In the case of a motion for summary judgment, the memorandum shall comply with the additional requirements of subsection (d).~~
- (1) Motions. (See Section II(B)of the ECF Attorney User Manual (APPENDIX B) ) The Clerk shall accept for filing only those motions in civil cases that include or are accompanied by a supporting memorandum of facts and law (so identified), and (except in the case of an ex parte motion) a certificate of service of the motion

and memorandum upon all other parties to the action. Motions for Summary Judgment shall comply with LR 56.1.

- (A) All motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59 and 60 shall be accompanied by a proposed order in a word processing format sent to ECF mailbox only for presiding judge (do not sent to regular e-mail address).
- (B) Consultation by Counsel. All motions, including discovery motions but not including motions pursuant to Fed. R. Civ. P. 12, 56, 59 and 60 shall be accompanied by a certificate of counsel affirming that, after consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion. Failure to attach an accompanying certificate of consultation may be deemed good grounds for denying the motion.

The certificate must contain the names of participating counsel and the date and manner of consultation. The burden will be on counsel filing the motion to initiate the conference upon giving reasonable notice of the time, place and specific nature of the conference. If an opposing counsel or party refuses to cooperate in the conduct of a conference, counsel must file a certificate to that effect, setting out counsel's efforts to comply with this rule.

- ~~(2) Responses. The response to the motion and its supporting memorandum, unless the motion is pursuant to Fed. R. Civ. P. 12(b) or 56, shall be filed within fourteen days after service of the motion and shall be accompanied by a proposed order that is emailed to the judicial officer assigned to the case. Failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion. In the case of a motion for summary judgment and a motion to dismiss pursuant to Fed. R. Civ. P. 12(b), a response must be filed within thirty days after service of the motion. Responses shall contain a brief reply to the grounds of the motion and a supporting memorandum of facts and law, and, in the case of motions for summary judgment, the additional submissions required by subsection (d).~~
- (2) Responses. The response to the motion and its supporting memorandum, unless the motion is pursuant to Fed. R. Civ. P. 12(b) and (c) or 56 (see LR 12.1(b) and LR 56.1(b)), shall be filed within 14 days after service of the motion and shall be accompanied by a proposed order in a word processing format sent to the ECF mailbox only for the judge (do not send to regular email address). Failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion.

- (b) Submission of Motion. Upon the filing of a motion and the timely filing of the response, ~~if any,~~ and a reply, if allowed by the Court or these Rules the motion shall be submitted to the Court for a ruling unless a hearing has been requested and granted.
- ~~(c) Hearing on Motion. If counsel desires a hearing on the motion before the court, counsel shall request the hearing in the motion or response. If the court determines that a hearing would be helpful or necessary, the court will set the date and time of the hearing and the clerk will notify all counsel.~~
- (c) Reply Memoranda. Except as provided by LR 12.1(c) and LR 56.1(c), reply memoranda may be filed only upon court order granting a motion for leave to reply. Such motion for leave must be filed within 7 days of service of the response.
- ~~(d) Summary Judgment Motions.~~
- ~~(1) Except for good cause shown, motions for summary judgment shall be filed at least forty-five days before the trial setting, unless required to be filed earlier by Fed. R. Civ. P. 16(b) scheduling order.~~
- ~~(2) Motion. On every motion for summary judgment, in addition to citations to appropriate legal authorities, the proponent of the motion shall submit in a separate document affixed to the memorandum each material fact upon which the proponent relies in support of the motion by serial numbering, and shall affix to the memorandum copies of the precise portions of the record relied upon as evidence of each material fact. If the proponent contends that the opponent of the motion cannot produce evidence to create a genuine issue of material fact, the proponent shall affix to the memorandum copies of the precise portions of the record relied upon as evidence of this assertion.~~
- ~~(3) Response. In addition to citing appropriate legal authorities, the opponent of a motion for summary judgment who disputes any of the material facts upon which the proponent has relied pursuant to subsection (2) above shall respond to the proponent's numbered designations, using the corresponding serial numbering, both in the response and by attaching to the response the precise portions of the record relied upon to evidence the opponent's contention that the proponent's designated material facts are at issue.~~
- (c d) Hearing on Motion. If counsel desires a hearing on the motion before the court, counsel shall request the hearing in the motion or response and shall explain why a hearing would be helpful or necessary. If the court determines that a hearing would be helpful or necessary, the Court will set the date and time of the hearing and the clerk will notify all

counsel.

- ~~(c) Memoranda in support of or in opposition to motions shall not exceed twenty pages without prior court approval, including the statement of facts.~~
- (e) Length. Unless otherwise ordered by the Court, memoranda in support and in opposition to motions shall not exceed 20 pages in length, and reply memoranda, if permitted, shall not exceed 5 pages in length.
- ~~(f) Injunctions. An application for a temporary restraining order will be considered by the court upon compliance with the following:~~
  - ~~(1) The filing of a motion or complaint seeking such relief;~~
  - ~~(2) Compliance with the notice provisions of Fed. R. Civ. P. 65; and~~
  - ~~(3) Application to the judge to whom the case is assigned. Application may be made to another judge in the event the judge to whom the case is assigned is unavailable by asking the clerk to arrange for hearing before another judge.~~
  - ~~(4) In the event an application for temporary restraining order is filed preceding a complaint and, accordingly, before a judge is assigned, the filing of the application will cause the random selection of a judge. If the first randomly assigned judge is unavailable, the random selection will continue until an available judge is drawn, with that judge continuing throughout the case as the assigned judge.~~
- (f) Motions Pending on Removal. When an action or proceeding is removed to this Court with pending motions on which memoranda have not been submitted, the moving party shall comply with these rules within 14 days after removal, and each party opposing the motion shall then comply with these rules.
- (g) Prisoners. All motions and orders to produce prisoners for testimony shall be filed with the Clerk at least 28 days prior to the date of the hearing or trial. Counsel for represented parties are responsible for filing a motion if they require prisoner attendance. In pro se cases, the Court will issue the writ compelling the attendance of prisoner parties. However, pro se parties shall be responsible for filing a motion to require the attendance of non-party prisoners. Relief from this rule may be obtained by an order of the Court.
- (h) Citation of Authority and Copies of Authority. Citations to authority shall be in a generally accepted citation form. Citations to any judicial or administrative decision not fully reported in either United States Reports, Supreme Court Reporter, a Federal Reporter, Federal Supplement, Federal Rules Decisions, or a South Western Reporter shall include Westlaw or Lexis citations, if available. If the decision is not available on Lexis or

Westlaw, a copy of the entire text of the decision shall accompany the memorandum. Citations to statutes, regulations, ordinances, or other legislative authority not reported in the United States Code or the Tennessee Code Annotated shall include Westlaw or Lexis citations, if available. If the statute, regulation, ordinance, or other legislative authority is not available on Lexis or Westlaw, a copy of the authority shall accompany the memorandum. If a party does not have access to the Lexis or Westlaw materials cited by a filing party and makes a request of the filing party, the filing party must provide a copy of the case, statute, regulation, ordinance, or other legislative authority to the requesting party.

- (i) Citation to Internet Materials. If a party cites to other materials from an internet source or website, a copy of such materials shall be attached to the filing in PDF format to ensure that the materials cited are retained in their original form in the Court's filing system.

### LR7.3

#### ~~TRIAL MEMORANDA~~

#### MOTION FOR REVISION OF INTERLOCUTORY ORDERS

~~Counsel for the parties in all civil cases may file with the clerk and serve upon all opposing counsel a trial memorandum of facts and law not less than fourteen days before the case is set for trial, unless required to be filed earlier by the court. Without court approval, the memorandum shall be limited to thirty-five pages in length.~~

~~The court may require trial memoranda and will, in such a case, notify counsel when the memoranda are due.~~

- (a) Application to Non-Final Orders. Before the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case, any party may move, pursuant to Fed. R. Civ. P. 54(b), for the revision of any interlocutory order made by that Court on any ground set forth in subsection (b) of this rule. Motions to reconsider interlocutory orders are not otherwise permitted.
- (b) Form and Content of Motion to Revise. A motion for revision must specifically show: (1) a material difference in fact or law from that which was presented to the Court before entry of the interlocutory order for which revision is sought, and that in the exercise of reasonable diligence the party applying for revision did not know such fact or law at the time of the interlocutory order; or (2) the occurrence of new material facts or a change of law occurring after the time of such order; or (3) a manifest failure by the Court to consider material facts or dispositive legal arguments that were presented to the Court before such interlocutory order.

- (c) Prohibition Against Repetition of Argument. No motion for revision may repeat any oral or written argument made by the movant in support of or in opposition to the interlocutory order that the party seeks to have revised. Any party who violates this restriction shall be subject to appropriate sanctions, including, but not limited to, striking the filing.
- (d) The provisions of this rule do not apply to requests to dissolve or modify interlocutory injunctions pursuant to Fed. R. Civ. P. 65.

**LR7.4**  
**CONTINUANCES**

~~Continuances shall be requested at the earliest time that the necessity for the continuance appears to counsel. Requests for trial continuances in civil or criminal cases shall be by a motion filed through the Court's ECF system or oral motion in open court except in emergencies.~~

**LR11.1<sup>5</sup>**  
**SIGNATURES**

(a) The Filing User's login and password shall serve as that Filing User's signature on all papers filed electronically with the Court. They serve as a signature for purposes of Fed. R. Civ. P. 11, all other civil and criminal rules, all local rules, and for any other purpose for which a signature is required in connection with proceedings before the Court.

(b) Every paper filed electronically must include a signature block containing the Filing User's name, attorney bar number, firm name, street address, telephone number, and primary E-Mail address. In addition, the name of the Filing User under whose login and password the paper is filed must be preceded by a "s/" typed in the space where the Filing User's ink signature would otherwise appear.

SAMPLE:     s/Name of Filing User  
                  Attorney Bar Number  
                  Firm Name  
                  Street Address  
                  City/State/Zip Code  
                  Telephone No. (xxx)xxx-xxxx  
                  Primary E-Mail Address

c) A paper containing the signature of a *pro se* defendant in a criminal case shall be scanned and filed by the Filing User or court personnel.

(d) A paper requiring the signature of more than one party shall be electronically filed in

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<sup>5</sup> L.R. 11.1 adopted pursuant to Administrative Order 2005-26 in connection with implementation of the Court's Electronic Case Filing system effective January 1, 2006.

accordance with Section 10.4 of the ECF Policies and Procedures by:

- (1) Submitting a scanned paper containing all of the necessary signatures; or
- (2) Submitting a paper electronically signed by one of the parties (or counsel) but also representing the consent of the other parties in each of the appropriate signature lines in the same manner that third party consents are noted on paper filings; or
- (3) Any other manner approved by the Court.

### **LR 12.1 MOTIONS TO DISMISS**

- (a) Moving Party. Memoranda in support of motions to dismiss filed pursuant to FRCP 12(b) and (c) shall not exceed 20 pages without prior Court approval.
- (b) Responses. Memoranda in opposition to motions to dismiss shall not exceed 20 pages without prior Court approval. A party opposing a motion to dismiss must file a response within 28 days after the motion is served.
- (c) Reply by Moving Party. Leave of Court is not required to file a reply to a response to a motion to dismiss. Replies must be filed within 14 days after the response is served. A reply by a moving party shall not exceed 10 pages without prior Court approval.

### **LR16.1**

#### ~~PRETRIAL CONFERENCES: ALTERNATIVE DISPUTE RESOLUTION~~ **FED. R. CIV. P. 16 PRETRIAL AND SCHEDULING CONFERENCES AND ORDERS**

- (a) Every party shall have in attendance at all pretrial conferences an attorney or other person possessing full authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.
- (b) Scheduling and Settlement Conferences in Civil Cases. All scheduling and settlement conferences may be conducted by the judge or magistrate judge to whom the case is assigned, or by another district judge or magistrate judge who agrees to conduct the conference at the request of the judge to whom the case is assigned. ~~In compliance with Fed. R. Civ. P. 16, each judge may exempt from the scheduling conference required by that rule cases involving *pro se* parties, petitions for writ of habeas corpus, Social Security appeals, bankruptcy appeals, forfeiture and penalty proceedings, and reviews of other administrative proceedings.~~

~~The time and form of scheduling conferences will be determined by each judge. The scheduling conference requirements/instructions are found on the Court's website at: [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov), under the heading: Instructions, Procedures and Attachments to Notices.~~

- ~~(c) Initial Conference: Alternative Dispute Resolution. At the initial scheduling conference held pursuant to Fed. R. Civ. P. 16(b), in civil cases in which all parties are represented by counsel, the possibility of settlement shall be discussed and the court will determine if a method of alternative dispute resolution should be utilized in the case. The court may order a settlement conference, an early neutral evaluation, a mini-trial, summary jury trial, or mediation by an attorney or retired judge.~~
- (c) Exempted cases.** The following categories of cases are exempted from the requirements of Fed. R. Civ. P. 16(b):
- (1)** Pro-se Prisoner petitions filed under 42 U.S.C. § 1983, or under 28 U.S.C. §§ 2254 and 2255;
  - (2)** Actions for judicial review of administrative decisions of government agencies or instrumentalities in which the review is conducted on the basis of the administrative record;
  - (3)** Prize proceedings, actions for forfeiture and seizures, for condemnation, or for foreclosure of mortgages or sales to satisfy liens of the United States;
  - (4)** Bankruptcy appeals filed pursuant to 28 U.S.C. § 158 and bankruptcy cases in which an Article III Judge is required to review proposed findings of fact and conclusions of law of the Bankruptcy Judge in non-core proceedings, under 28 U.S.C. § 157; provided, however, that cases withdrawn from Bankruptcy Court, pursuant to 28 U.S.C. § 157(d), are not exempted;
  - (5)** Proceedings for admission to citizenship or to cancel or revoke citizenship;
  - (6)** Proceedings to compel arbitration or to confirm or set aside arbitration awards;
  - (7)** Proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;
  - (8)** Proceedings to compel the giving of testimony or production of documents in this District in connection with discovery or for the perpetuation of testimony for use in a matter pending or contemplated in a United States District Court of another District;

(9) Proceedings for the temporary enforcement of orders of the National Labor Relations Board; and

(10) Civil actions by the Veterans Administration or other government agency for recovery of erroneously paid educational assistance.

~~(d) Subsequent Settlement Conferences. If settlement is not achieved as a result of the initial conference, there shall be at least one additional settlement conference at a point in the litigation to be determined by the court. If any party is appearing *pro se*, however, the holding of the settlement conference shall be in the discretion of the court.~~

(d) Timing of Initial Scheduling Conference. The time and form of scheduling conferences will be determined by each judge. The scheduling conference requirements/instructions are found on the Court's website at [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov), in the Forms & Applications portal under the heading: ECF Instructions, Procedures & Applications.

~~(e) Mediation. As part of the scheduling/pretrial conference conducted pursuant to Fed. R. Civ. P. 16, attorneys shall be prepared to discuss the advisability of referring their case to mediation. After conferring with the attorneys for each of the parties, and upon determining that the case is an appropriate one for mediation, the Court may, in its discretion, refer the case to a settlement conference, to be conducted by a judge, or to mediation by a member of the Court's mediation panel. At any time after the initial Rule 16 scheduling conference, any party may request the Court to refer the case to mediation in accordance with Rule 72.1(f).~~

~~The mediation will be conducted pursuant to the current version of the Mediation Procedure for the United States District Court for the Western District of Tennessee, as adopted by the Court, a copy of which will be maintained on file in the Clerk's Office and may be found on the Court's website at: [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).~~

~~The court retains discretion to make available other alternative dispute resolution methods, including without limitation, mini trial, early neutral evaluation, and summary jury trial.~~

(e) Responsibility of Parties Prior to Initial Scheduling Conference.

(1) Counsel for all parties shall, at the initiative of plaintiff's counsel, confer prior to the initial scheduling conference to discuss the issues enumerated in Fed. R. Civ. P. 16(b) and (c) and to determine if any issues can be resolved by agreement, subject to approval by the Court.

(2) Counsel for all parties shall, at the initiative of plaintiff's counsel, prepare a proposed scheduling order that encompasses the discovery plan required by Fed. R. Civ. P. 26(f), the pertinent issues listed in Fed. R. Civ. P. 16(b) and (c), and any issues

that can be resolved by agreement. All parties should consult the website for the assigned Judge to ascertain if the Judge has particular requirements for the form or content of pretrial and scheduling orders. All proposed scheduling orders must include a deadline for mediation or judicial settlement conference. The proposed scheduling order shall be sent in word processing format to the ECF mailbox only (do not send to regular e-mail address) for the Judge conducting the scheduling conference at least 3 days before the initial scheduling conference.

- (f) Scheduling Order. The scheduling order entered by the Court as required by Fed. R. Civ. P. 16(b) shall include, along with other appropriate pretrial deadlines, a deadline for the filing of dispositive motions (including response and reply memoranda), which shall be at least 120 days prior to the trial.

**LR 16.2**  
**PRETRIAL AND SCHEDULING CONFERENCES:**  
**ALTERNATIVE DISPUTE RESOLUTION**

- (a) Initial Conference. At the initial scheduling conference held pursuant to Fed. R. Civ. P. 16(b), in civil cases in which all parties are represented by counsel, the possibility of settlement shall be discussed, and the Court will determine if a method of Alternative Dispute Resolution (“ADR”) should be utilized in the case. The attorneys shall be prepared to discuss the advisability of referring their cases to alternative dispute resolution. ADR, without limitation, may include mediation by a Court approved mediator pursuant to the Court’s Mediation Plan, private mediation, judicial settlement conferences, an early neutral evaluation, a mini-trial, summary jury trial or the like.
- (b) Party Requests. At any time after the initial Rule 16 scheduling conference, any party may inform the Court that the case is ripe for ADR and request the Court to direct the case to mediation in accordance with the Court’s Mediation Plan or some other form of ADR.

The parties may request a judicial settlement conference only after they have engaged in and certify to the Court that they have participated in good faith in at least one unsuccessful mediation under the Court’s Mediation Plan or private mediation.

- (c) Court Ordered Alternative Dispute Resolution. The Court may order the parties to undergo any form of ADR, including but not limited to mediation pursuant to the Court’s Mediation Plan, (at <http://www.tnwd.uscourts.gov/mediation-plan.php>), attached hereto as **APPENDIX —**.
- (d) Reporting Mediation Results. Within 7 days of completion of Court ordered ADR, the parties shall, without disclosing the parties’ respective positions at the ADR, file a notice that the

ADR was conducted and was successful or unsuccessful and whether some other form of ADR might assist in resolving the matter.

- (e) Relief From Alternative Dispute Resolution Requirement. By motion for good cause shown, a party may be relieved of the obligation to participate in ADR.

### **LR 16.3 TRIAL MEMORANDA**

Parties in civil cases may file with the Clerk a trial memorandum of facts and law not less than 14 days before the case is set for trial. Without prior Court approval, the memorandum shall be limited to 25 pages in length. The Court may require trial memoranda and will, in such a case, notify counsel when the memoranda are due.

### **LR 16.4 TRIAL CONTINUANCES**

Cases shall not be continued upon stipulation of parties. Continuances shall be requested at the earliest time that the necessity for the continuance appears to counsel. Requests for trial continuances in civil or criminal cases shall be by a written motion filed with the Court or, in emergencies only, on oral motion made in open court. Continuances may be granted only upon a showing of good cause. All motions for continuances must comply with LR 7.2.

### **LR 23.1 DESIGNATION OF “CLASS ACTIONS”**

The complaint or other pleading seeking to assert a claim by or against a class shall bear next to its caption the legend “Complaint - Class Action.”

### **LR26.1 DISCOVERY PROCEDURES IN CIVIL CASES**

- (a) ~~Form of Responses to Interrogatories, Requests for Admission and Requests for Production. When responding in any manner, by answer, objection or otherwise, to interrogatories, requests for admissions or requests for production, the responding party shall set out the interrogatory or request to which the party is responding immediately before the party's response. Interrogatories, Requests for Admissions, Requests for Production and the responses to same, are served on opposing counsel and NOT FILED with the Court until used in the proceeding or the court orders filing.~~
- (a) Interrogatories; Requests for Admission; Requests for Production of Documents.  
(1) When answering or objecting to interrogatories, requests for admission or requests

for production of documents, the replying or objecting party shall set forth immediately preceding the answer or objection, the discovery request with respect to which answer or objection is made.

(2) Parties may electronically file a “Notice of Service” setting forth the date on which the interrogatories, requests for admission or requests for production of documents or the responses thereto were served. Interrogatories, Requests for Production of Documents, and Requests for Admission shall not be filed, except as allowed by LR 26.1(a)(3) or LR 26.1(b).

(3) A motion for leave of Court to submit additional interrogatories beyond the number allowed in Fed. R. Civ. P. 33 shall include copies of such additional interrogatories to be submitted, along with a statement as to the necessity for such additional discovery, its relevance or likelihood to lead to admissible evidence, and the fact that it cannot be obtained from other sources, as well as the certification required by LR 7.2(a).

~~(b) Memoranda and Responses. The provisions of LR7.2 (a), (b) and (c) shall apply to all motions and responses concerning discovery pursuant to Fed. R. Civ. P. 26 through 37.~~

(b) Discovery Motions.

(1) Discovery motions are subject to the requirements of LR 7.2(a).

(2) Motions to compel discovery in accordance with Fed. R. Civ. P. 26 through 37 shall:

(A) quote verbatim or attach copies of each deposition question, interrogatory, request for admission, or request for production to which objection has been taken or incomplete response has been given; and,

(B) include the response and the grounds assigned for the objection (if not apparent from the objection), if any.

(3) Responses to motions to compel discovery shall state with particularity the basis for, and, when appropriate, include evidentiary support for each objection to the requested discovery or given response.

(4) Parties shall file only those portions of the deposition, interrogatory, request for documents, request for admission, or response that are at issue.

~~(c) Timeliness of Discovery. All discovery shall be completed and all motions in connection with disputed discovery shall be filed no later than the dates designated in the Scheduling Order entered in the action pursuant to LR16.1.~~

(c) Subpoena in Aid of Discovery. Absent an order of the Court to the contrary, each party to the action in which a subpoena is served requiring the production of documents or an inspection

shall have the right to review and copy documents produced pursuant to such a subpoena and to participate in the inspection.

(d) Parties shall supplement disclosures and discovery responses as required by Fed. R. Civ. P. 26(e) no later than thirty days before the trial date.

(e) E-Discovery

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(1) Introduction. Counsel for parties should confer as to whether the parties will seek discovery of electronically stored information (“e-discovery”). The Court expects the parties to cooperatively agree on how to conduct e-discovery. Any agreement reached shall be submitted to the Court for approval. In the event that such agreement has not been reached and approved by the Court by the Fed. R. Civ. P. 16 scheduling conference, the following default standards shall apply until such time, if ever, the parties reach agreement and the Court approves the plan to conduct e-discovery.

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(2) Discovery conference. Parties shall discuss the parameters of their anticipated e-discovery at the Fed. R. Civ. P. 26(f) conference, as well as at the Rule 16 scheduling conference with the Court, consistent with the procedures outlined below. Prior to the Rule 26(f) conference, the parties shall exchange the following information:

- (A) A list of the persons most likely to have relevant electronically stored information ("identified custodians"), including a brief description of each person's title and responsibilities (see Para. 7).
- (B) A list of each relevant electronic information system that has been in place at all pertinent time periods including the physical location of the system, the type of system, whether the system is archival or active, and the person most knowledgeable about the system.
- (C) The parties should also include other pertinent information about their electronically stored information and whether that electronically stored information is not reasonably accessible. Electronically stored information not reasonably accessible may include information created or used by electronic media that is no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost.
- (D) The name of the individual designated by a party as being most knowledgeable regarding that party's electronic document retention policies ("the retention coordinator"), as well as a general description of the party's electronic document retention policies for the systems identified above (see Para. 7).
- (E) The name of the individual who shall serve as that party's "e-discovery coordinator" (see Para. 3).

- (F) Any problems reasonably anticipated to arise in connection with e-discovery. To the extent that the state of the pleadings does not permit a meaningful discussion of the above by the Rule 26(f) conference, the parties shall either agree on a date that this information will be mutually exchanged or submit the issue for resolution by the Court at the Rule 16 scheduling conference.

(3) E-discovery coordinator. In order to promote communication and cooperation between the parties, each party to a case shall designate a single individual through whom all e-discovery requests and responses are coordinated ("the e-discovery coordinator"). Regardless of whether the e-discovery coordinator is an attorney (in-house or outside counsel), a third-party consultant, or an employee of the party, he or she must be:

- (A) Familiar with the party's electronic information systems and capabilities in order to explain these systems and answer relevant questions;
- (B) Knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues; and
- (C) Prepared to participate in e-discovery dispute resolutions.

The e-discovery coordinators shall be responsible for organizing each party's e-discovery efforts to insure consistency and thoroughness and generally, to facilitate the e-discovery process.

(4) Timing of e-discovery. Discovery of relevant electronically stored information shall proceed in an orderly fashion.

- (A) After receiving requests for document production, the parties shall search their documents, other than those identified as electronically stored information not reasonably accessible, and produce responsive electronically stored information in accordance with Rule 26(b)(2)(B).
- (B) Electronic searches of documents identified as electronically stored information not reasonably accessible shall not be conducted until the initial electronic document search has been completed. Requests for information expected to be found in not reasonably accessible sources must be narrowly focused, with some basis in fact supporting the request.
- (C) On-site inspections of electronic information system under Fed. R. Civ. P. 34(b) shall not be ordered absent good cause and demonstration of specific need.

(5) Search methodology. If the responding party intends to use an electronic search to locate responsive electronically stored information, the parties shall notify all other parties and

disclose proposed search terms and any restrictions as to scope and method. The parties shall confer in good faith in an attempt to reach an agreement as to the method of searching, and the words, terms, and phrases to be searched. The parties shall also attempt to reach an agreement as to the timing and conditions of any additional searches that may become necessary in the normal course of discovery.

(6) Default format of electronically stored information. If during the course of the Rule 26(f) conference the parties cannot agree to the format for document production, electronically stored information shall be produced to the requesting party as image files (e.g., PDF or TIFF). If the image file is produced, the producing party must continue to preserve the integrity of the native file, i.e., the original formatting of the document, its metadata and, where applicable, its revision history. After initial production in image file format is complete, a party must demonstrate a particularized need for production of electronically stored information in its native format.

(7) Retention. During the Rule 26(f) conference, the parties should work toward an agreed preservation Order that outlines the steps each party shall take to segregate and preserve the integrity of all relevant electronically stored information. In order to avoid later accusations of spoliation, a Fed. R. Civ. P. 30(b)(6) deposition of each party's retention coordinator may be appropriate. The retention coordinators shall:

(A) Take steps to ensure that relevant e-mail of identified custodians are not permanently deleted in the ordinary course of business and that relevant electronically stored information maintained by the individual custodians are not altered.

(B) Provide notice to the parties as to the criteria used for spam and/or virus filtering of e-mail and attachments. E-mails and attachments filtered out by such systems shall be deemed non-responsive so long as the criteria underlying the filtering are reasonable.

(8) Privilege. Counsel shall attempt to reach an agreement on a proposed Order regarding waiver of privilege or protection in the event privileged, protected or otherwise confidential electronically stored information is inadvertently disclosed. See Fed. R. Evid. 502.

(9) Costs. The shifting of discovery costs to the requesting party or the sharing of those costs between the requesting party and responding party should be considered when the electronically stored information is sought. If the parties are unable to reach an agreement, the court, on motion of one of the parties, should consider the following factors, in descending order of importance, in determining whether any or all discovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the

relative benefits of obtaining the information. See also Fed. R. Civ. P. 26(b)(2)(C).

**LR 43.1**  
**PROCEDURES AT HEARINGS AND TRIALS**

(a) Presence of Counsel.

(1) Duty of Counsel. Unless excused by the Court, unrepresented parties or counsel with authority to bind parties shall be present and punctual at all portions and phases of hearings and trials, including in jury cases, the time during which the jury is considering its verdict. Counsel and unrepresented parties shall inform their witnesses of the need for punctuality.

(2) Presumed Present. Unless the contrary affirmatively appears of record, it will be presumed that the parties and their counsel are present at all stages of the trial, or if absent, that their absence was voluntary and constituted a waiver of their presence.

(b) Conduct of Counsel.

(1) During Court proceedings, all attorneys shall stand when speaking. All objections and comments thereon shall be addressed to the Court. Objections shall be made with specific reference to the Federal Rule of Evidence or other authority on which the objection is based without argument. Any request to have the reporter read back testimony should be addressed to the Court. There shall be no oral confrontation between opposing counsel.

(2) Courtroom Attire. All attorneys appearing in this Court shall be appropriately attired - coat and tie for men, comparable attire for women - and shall not be groomed or attired in a manner calculated to distract attention from the proceedings, call attention to themselves, or show disrespect to the Court.

(c) Presence of Parties. All parties shall be present at any trial unless prior approval of the absence of a party is obtained from the Court.

(d) Examination of Witnesses.

(1) Only one attorney representing each party in the litigation shall examine, cross-examine or object during the examination of an individual witness.

(2) No person shall, by facial expression or other physical gesture, exhibit any opinion concerning any testimony that is being given by a witness.

(e) Exhibits.

(1) When practical, all documentary exhibits shall be prepared in sufficient quantities so that a copy may be furnished to the witness, the Court, opposing counsel and the examining attorney. The admissibility of trial exhibits should be stipulated whenever possible.

(2) After the final determination of an action, counsel or parties shall have 30 days within which to withdraw exhibits and depositions. In the event the exhibits and depositions are not withdrawn, the Clerk shall, after notice to the parties, destroy or otherwise dispose of them.

(g) Courtroom Technology. In the joint pretrial order the parties shall disclose the technology they intend to use in the Courtroom during the trial to present their case. This disclosure shall list:

- (1) equipment they intend to bring into the Courtroom to use; and,
- (2) equipment supplied by the Court that the parties intend to use.

Further, the parties shall also confirm the compatibility/viability of their planned use of technology with the Court's equipment.

(h) Requests for Jury Instructions. All requests for jury instruction shall be filed in accordance with the deadlines established in the scheduling order or by the Court. The requests must contain citations of supporting authorities. Supplemental and additional instructions may be submitted to the Court prior to final argument by counsel.

#### **LR 45.1 SUBPOENAS IN CIVIL ACTIONS**

The United States Marshals will not serve subpoenas for witnesses in civil cases unless so required by law or by order of the Court upon a showing of good cause.

#### **LR47.1 JURIES**

- (a) Size of Civil Case Juries. The court will seat ~~a minimum of eight jurors in civil cases~~ at least 8 jurors in civil cases together with such additional jurors as the Court deems appropriate based on the nature of the case.
- (b) Challenges. Challenges to jurors shall be made in a manner that will not reveal to the jury the identity of the party making the challenge.

#### Post-trial Interrogation of Jurors:

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~~(1) After Verdict. No attorney, party, or representative of either may interrogate a juror after the verdict has been returned without prior approval of the court. Approval of the court shall be sought only by an application of counsel in open court or upon written motion, either of which must state the grounds for and the purpose of the interrogation.~~

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~~If post-verdict interrogation is approved, the court will determine the scope of and any limitation on the interrogation prior to the interrogation.~~

- (c) Relations With a Jury. Before and during the trial, parties and attorneys shall avoid conversing or otherwise communicating with a juror on any subject, whether pertaining to the case or not. During argument to the jury, no juror shall be addressed individually.
- (d) Juror Information. In the discretion of the Court, the following shall be permitted:
- (1) Juror Notetaking. Jurors shall be instructed that they may take notes during the trial and deliberations. The Court shall provide suitable materials for this purpose. Jurors shall have access to their notes during deliberations, but not during recesses. After the jury has rendered a verdict or been dismissed, the notes shall be collected by Court personnel, who shall destroy them promptly. Juror notes shall not be regarded as evidence.
- (2) Juror Notebooks. When the Court deems it helpful in a particular case, jurors may be provided with notebooks to use in collecting and organizing appropriate materials, including such items as jury instructions, written exhibits, and the juror's own notes. Counsel should be apprised of this procedure and invited to prepare exhibits and other materials in a way that facilitates their inclusion in the jurors' notebooks. At the end of the trial, the notebooks should be collected by Court personnel and their contents destroyed, unless the Court instructs to the contrary.
- (3) Interim Commentary. During the course of the trial, the Court may permit parties to address the jury in order to assist jurors in understanding the evidence that has been presented or will be presented. The Court may place reasonable limits on such statements and shall permit all parties to respond to the remarks of any one party.
- (e) Post-Verdict Interrogation of Jurors. After a verdict, no attorney, party, or representative of either may interrogate a juror without prior approval of the Court. Approval of the Court shall be sought only by an application of counsel in open Court, or upon written motion, either of which must state the grounds for and the purpose of the interrogation. If a post-verdict interrogation is approved, the Court will determine the scope of the interrogation and any limitations upon the interrogation prior to the interrogation.
- (f) After Mistrial. In the event that a mistrial is ordered due to the jurors' inability to agree on a verdict, any attorney or the attorney's representative may interrogate a juror without prior approval of the court, unless the court determines that the interrogation should not take place or determines that appropriate limitations should be established.

**LR 52.1**  
**POST-TRIAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW - -**  
**NON-JURY CASES**

Absent Court order to the contrary, each party may submit amended and supplemental proposed findings

of fact and conclusions of law within 14 days after the conclusion of trial. For good cause, the time period may be lengthened or shortened.

**LR54.1**  
**COSTS, ATTORNEYS' FEES AND PAYMENT OF JUDGMENT**  
**AND COSTS IN CIVIL CASES**

~~(a) Judgments. Except with respect to litigation in which the United States is a party, the clerk will not, unless authorized by order of the court, accept payment of judgments. Counsel will, however, upon receipt of payment of a judgment, file a Notice of Satisfaction of Judgment to the case record.~~

(ba) Costs. If counsel for the litigants in a civil case parties can agree on costs, it is not necessary to file a cost bill with the clerk. If counsel cannot agree, a cost bill will be filed with the clerk within thirty days from the termination of the case. If a cost bill is filed, the clerk will assess costs after notice and hearing. No costs are to be paid through the clerk except those that are due the clerk.

(b) Attorney's Fees. A motion for an award of attorney's fees and related non-taxable expenses may be filed within 14 days from the date the Court's judgment becomes final. In addition to the requirements of Fed. R. Civ. P. 54(d)(2), a motion for an award of attorney's fees shall be supported by a memorandum setting forth the authority of the Court to make such an award, why the movant should be considered the prevailing party, if such a consideration is required for the award, and any other factors that the Court should consider in making the award. The motion shall also be supported by:

(1) an affidavit or declaration of counsel setting out in detail the number of hours spent on each aspect of the case, and the rate customarily charged by counsel for such work; and,

(2) an affidavit or declaration of another attorney in the community, who is not otherwise involved with the case, setting out the prevailing rate charged in the community for similar services. Within eleven days after service of the motion, the party against whom the award is requested shall respond with any objections thereto and an accompanying memorandum setting forth why the award is excessive, unwarranted, or unjust.

(c) Payment and Satisfaction of Judgments. Except with respect to garnishments, litigation in which the United States is a party, or in which there is recovery by a minor or incompetent, the Clerk shall not, unless authorized by order of the Court, accept payment of judgments. When a judgment for the payment of money has been satisfied, the prevailing party shall file with the Clerk a Notice of Satisfaction of Judgment.

**LR 56.1**

## MOTIONS FOR SUMMARY JUDGMENT

- (a) Moving Party. In order to assist the Court in ascertaining whether there are any material facts in dispute, any motion for summary judgment made pursuant to Fed. R. Civ. P. 56 shall be accompanied by a separate, concise statement of the material facts as to which the moving party contends there is no genuine issue for trial. Each fact shall be set forth in a separate, numbered paragraph. Each fact shall be supported by specific citation to the record. If the movant contends that the opponent of the motion cannot produce evidence to create a genuine issue of material fact, the proponent shall affix to the memorandum copies of the precise portions of the record relied upon as evidence of this assertion.

Memoranda in support of a motion for summary judgment shall not exceed 20 pages without prior Court approval. The separate statement of material facts shall not exceed 10 pages without prior Court approval.

- (b) Non-moving Party. Any party opposing the motion for summary judgment must respond to each fact set forth by the movant by either:

- (1) agreeing that the fact is undisputed;
- (2) agreeing that the fact is undisputed for the purpose of ruling on the motion for summary judgment only; or
- (3) demonstrating that the fact is disputed.

Each disputed fact must be supported by specific citation to the record. Such response shall be filed with any memorandum in response to the motion. The response must be made on the document provided by the movant or on another document in which the non-movant has reproduced the facts and citations verbatim as set forth by the movant. In either case, the non-movant must make a response to each fact set forth by the movant immediately below each fact set forth by the movant. In addition, the non-movant's response may contain a concise statement of any additional facts that the non-movant contends are material and as to which the non-movant contends there exists a genuine issue to be tried. Each such disputed fact shall be set forth in a separate, numbered paragraph with specific citations to the record supporting the contention that such fact is in dispute.

Memoranda in opposition to motions for summary judgment shall not exceed 20 pages without prior Court approval. A non-movant's statement of additional facts shall not exceed five 5 pages without prior Court approval.

A party opposing a motion for summary judgment must file a response within 28 days after the motion is served or a responsive pleading is due, whichever is later.

- (c) Reply by Moving Party. Leave of Court is not required to file a reply to a response to a motion for summary judgment. Replies must be filed within 14 days after the response is served. If the non-moving party has asserted additional facts, the moving party shall respond to these additional facts by filing a reply statement in the same manner and form as specified in section (b) above. Without prior Court approval, a reply by a moving party shall not exceed 10 pages, including the response to additional facts cited by the non-movant.
- (d) Failure to respond to a moving party's statement of material facts, or a non-moving party's statement of additional facts, within the time periods provided by these rules shall indicate that the asserted facts are not disputed for purposes of summary judgment.
- (e) Objections to Rule 56 Evidence  
Objections to evidentiary materials offered in support of or in opposition to motions for summary judgment shall be included within a timely response or reply memorandum, shall be separately designated as a specific evidentiary objection, and shall identify the Rule of Evidence or other authority that establishes inadmissibility of the proffered evidence.

## **65.1 INJUNCTIONS**

An application for a temporary restraining order or application for a preliminary injunction made in compliance with FRCP 65 will be considered by the Court only upon compliance with the following:

- (1) The filing of a motion or complaint seeking such relief;
- (2) Compliance with the notice provisions of Fed. R. Civ. P. 65; and
- (3) Application to the judge to whom the case is assigned. Application may be made to another judge in the event the judge to whom the case is assigned is unavailable by asking the Clerk to arrange for hearing before another judge.
- (4) In the event an application for temporary restraining order is filed preceding a complaint and, accordingly, before a judge is assigned, the filing of the application will cause the random selection of a judge. If the first randomly assigned judge is unavailable, the random selection will continue until an available judge is drawn, with that judge continuing throughout the case as the assigned judge.

## **LR67.1 INVESTMENT OF REGISTRY FUNDS<sup>6</sup>**

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<sup>6</sup> LR67.1 amended pursuant to Administrative Order 2008-30 filed October 9, 2008.

- (a) Investment of Funds. Registry funds in this court invested in a commercial financial institution shall be placed in either a money market account or a certificate of deposit. Any other order notwithstanding, registry funds shall not be invested in any commercial financial institution until the clerk has determined that the receiving institution has collateralized the deposit according to the Treasury Department regulations current at that time. Until such determination, the clerk shall deposit the funds in the Treasury of the United States.
- (b) Investment of Funds. Any order for investment of registry funds of the court shall be presented to the Clerk of Court.
- (1) The order shall specify the amount to be invested and whether the investment is to be a money market account or a certificate of deposit. The order may also leave this determination to the Clerk so that he can maximize the yield on this registry deposit.
  - (2) The order should not name the institution where the investment shall be made nor should it specify the duration of the investment. The clerk shall select a depository institution or institutions and shall invest at such institution(s) at the highest rate paid by the institution selected for the type of investment. The clerk shall exercise his best judgment in locating the institution paying the highest rate of interest.

**LR72.1**  
**RULES GOVERNING DUTIES AND PROCEEDINGS BEFORE**  
**UNITED STATES MAGISTRATE JUDGES**

- (a) Duties under 28 U.S.C. § 636(a). The United States Magistrate Judges for this district are authorized to perform and shall, without specific orders of reference, discharge all duties set out in 28 U.S.C. § 636(a) as follows:
- (1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;
  - (2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgments, affidavits, and depositions;
  - (3) the power to conduct trials under section 3401, title 18 United States Code, in conformity with and subject to the limitations of that section;
  - (4) the power to enter a sentence for a petty offense; and
  - (5) the power to enter a sentence for a Class A misdemeanor in a case in which the parties have consented.
- (b) Duties under 28 U.S.C. § 636(b). In addition to the powers and duties set forth in 28 U.S.C. §

636(a), the United States Magistrate Judges for this district are hereby authorized, pursuant to 28 U.S.C. § 636(b), to perform any and all additional duties, as may be assigned to them from time to time by any judge of this court, which are not inconsistent with the Constitution and laws of the United States.

The assignment of duties to the United States Magistrate Judges by the judges of this district may be made by standing order entered jointly by the district judges in this district or by any individual judge, in any case or cases assigned to him, through written order of reference or oral directive made or given with respect to such case or cases.

The duties authorized to be performed by the United States Magistrate Judges, when assigned to them pursuant to subsection (b) of this rule, shall include, but are not limited to:

- (1) Issuance of search warrants upon a determination that probable cause exists, pursuant to Fed. R. Crim. P. 41, issuance of orders for a pen register, a trap and trace device, or other surveillance device pursuant to 18 U.S.C. §§ 3122 & 3123, issuance of administrative search warrants upon proper application meeting the requirements of applicable law, and acceptance of returns of search warrants.
- (2) Processing of complaints and issuing appropriate summonses or arrest warrants for the named defendants. (Fed. R. Crim. P. 4.)
- (3) Conducting initial appearance proceedings, bond and detention hearings, and issuing orders of release or detention for defendants. (Fed. R. Crim. P. 5 and 18 U.S.C. § 3146.)
- (4) Appointment of counsel for qualified persons pursuant to this district's Criminal Justice Act Plan and approval of attorneys' compensation and expense vouchers. (18 U.S.C. Section 3006A; Fed. R. Crim. P. 44.)
- (5) Conducting full preliminary hearings. (Fed. R. Crim. P. 5.1 and 18 U.S.C. § 3060.)
- (6) Conducting removal hearings for defendants charged in other districts, including the issuance of warrants of removal. (Fed. R. Crim. P. 5.)
- (7) Issuance of writs of habeas corpus ad testificandum and habeas corpus ad prosequendum. (28 U.S.C. § 2241(c)(5).)
- (8) Release or detention of material witnesses and holding others to security of the peace and for good behavior. (18 U.S.C. § 3149 and 18 U.S.C. § 3043.)
- (9) Issuance of warrants and conducting extradition proceedings pursuant to 18 U.S.C. § 3184.
- (10) Conducting proceedings for the discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court. (18 U.S.C. § 3569 and 28 U.S.C.

§ 2007).

- (11) Issuance of an attachment or other orders to enforce obedience to an Internal Revenue Service summons to produce records or give testimony. (26 U.S.C. § 7604(a) and (b)).
- (12) Conducting post-indictment arraignments, acceptance of not guilty pleas, acceptance of guilty pleas in petty offense cases, and, with the consent of the defendant, in Class A misdemeanor cases and in felony cases, and the ordering of a presentence investigation report concerning any defendant who signifies the desire to plead guilty. (Fed. R. Crim. P. 10, 11(a) and 32(i) and (j).)
- (13) Accepting returns of indictments by the grand juries, issuance of process thereon, setting conditions for release on indictments and informations, and, on motion of the United States, ordering dismissal of an indictment or any separate count thereof. (Fed. R. Crim. P. 6(f) and 48(a).)
- (14) Supervision and determination of all pretrial proceedings and motions made in criminal cases including, without limitation, motions and orders made pursuant to Fed. R. Crim. P. 12, 12.2(c), 15, 16, 17, 17.1 and 28, 18 U.S.C. § 4244, orders determining excludable time under 18 U.S.C. § 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. § 3162; except that a magistrate judge shall not grant a motion to dismiss or quash an indictment or information made by the defendant, or a motion to suppress evidence, but may make proposed findings of facts and recommendations to the district judges concerning them.
- (15) Conducting hearings and issuance of orders upon motions arising out of grand jury proceedings including orders entered pursuant to 18 U.S.C. § 6003, and orders involving enforcement or modification of subpoenas, directing or regulating lineups, photographs, handwriting exemplars, fingerprinting, palm printing, voice identification, medical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion samples (with appropriate medical safeguards).
- (16) Conducting preliminary and final hearings in all probation revocation proceedings, and the preparation of a report and recommendation to the district judge following an evidentiary hearing as to whether the petition should be granted or denied, and granting or denying the petition in misdemeanor cases in which the defendant has previously consented to the exercise of jurisdiction by a magistrate judge or in which the magistrate judge has jurisdiction. (Fed. R. Crim. P. 32.1 and 18 U.S.C. § 3653.)
- (17) Supervision, hearing and determination of all pretrial proceedings and non-dispositive motions made in civil cases including, without limitation, rulings upon all procedural and discovery motions, and conducting Rule 16(b) pretrial conferences; except that a magistrate judge (absent a stipulation entered into by all affected parties) shall not appoint a receiver, issue an injunctive order pursuant to Fed. R. Civ. P. 65, enter an order

dismissing or permitting maintenance of a class action pursuant to Fed. R. Civ. P. 23, enter any order granting judgment on the pleadings or summary judgment in whole or in part pursuant to Fed. R. Civ. P. 12(c) or 56, enter an order of involuntary dismissal pursuant to Fed. R. Civ. P. 41(b) or (c), or enter any other final order or judgment that would be appealable if entered by a district judge of the court.

- (18) Conducting hearings, preparing and submitting proposed findings of fact and recommendations for disposition in any motion excepted in subparagraph (b)(17) of this rule.
- (19) Conducting all proceedings in civil suits, before or after judgment, incident to the issuance of writs of replevin, garnishment, attachment or execution pursuant to governing state or federal law, and the conduct of all proceedings and the entry of all necessary orders in aid of execution pursuant to Fed. R. Civ. P. 69.
- (20) Conducting or presiding over the voir dire examination and empanelment of trial juries in civil and criminal cases and accepting jury verdicts in the absence of the presiding district judge with the consent of the parties.
- (21) Processing and review of all suits instituted under any law of the United States providing for judicial review of final decisions of administrative officers or agencies on the basis of the record of administrative proceedings, and the preparation of a report and recommendation to the district judges concerning the disposition of the case.
- (22) Serving as a master for the taking of testimony and evidence and the preparation of a report and recommendation for the assessment of damages in admiralty cases, non-jury proceedings under Fed. R. Civ. P. 55(b)(2), or in any other case in which a special reference is made pursuant to Fed. R. Civ. P. Rule 53.
- (23) In admiralty cases, entering orders (i) appointing substitute custodians of vessels or property seized in rem; (ii) fixing the amount of security, pursuant to Rule E(5), Supplemental Rules for Certain Admiralty and Maritime Claims, which must be posted by the claimant of a vessel or property seized in rem; (iii) in limitation of liability proceedings, for monition and restraining order including approval of the ad interim stipulation filed with the complaint, establishment of the means of notice to potential claimants and a deadline for the filing of claims; and (iv) to restrain further proceedings against the plaintiff in limitation except by means of the filing of a claim in the limitation proceeding.
- (24) Appointing persons to serve process pursuant to Fed. R. Civ. P. 4(c), except that, as to in rem process, such appointments shall be made only when the Marshal has no deputy immediately available to execute the same and the individual appointed has been approved by the Marshal for such purpose.

- (25) Processing and review of petitions in civil commitment proceedings under the Narcotic Addict Rehabilitation Act, and the preparation of a report and recommendation concerning the disposition of the petition.
  - (26) Conducting proceedings and imposition of civil fines and penalties under the Federal Boat Safety Act. (46 U.S.C. § 1484(d)).
  - (27) Conducting settlement conferences or other alternative dispute resolution proceedings pursuant to this district's ADR program, LR 16.1, and Fed. R. Civ. P. 16.
  - (28) Granting admission or enrollment of attorneys to practice before the court in this district pursuant to LR 83.1.
  - (29) Order competency examinations of defendants pursuant to 18 U.S.C. § 4244.
- (c) Duties under 28 U.S.C. § 636(c) Civil Consent Jurisdiction. Pursuant to 28 U.S.C. § 636(c)(1), and subject to the provisions of this rule, the United States Magistrate Judges for the district are hereby specially designated and shall have jurisdiction to conduct any or all proceedings in any jury or nonjury civil matter and order the entry of judgment in the case upon consent of the parties. The following procedures shall govern:
- (1) If a civil case, upon filing, is randomly assigned to a district judge as the presiding judge pursuant to Rule 83.3 governing assignment of civil cases, the clerk will provide the plaintiff and/or plaintiff's counsel a "Notice, Consent, and Order of Reference - Exercise of Jurisdiction by a United States Magistrate Judge" form ("Consent Form"). The clerk shall also issue or supply at that time, for each defendant in the case, copies of the Consent Form which shall be attached to the summons and thereafter served upon the defendant(s) in the manner provided by Fed. R. Civ.P. 4; provided, however, that a failure to serve a copy of such notice upon any defendant shall not affect the validity of the service of process or the jurisdiction of the court to proceed. If, after the initial filing of a civil case, new or additional parties enter or join in the action pursuant to the operation of any statute, rule or order of the court, the clerk shall immediately mail or otherwise deliver a "Consent Form" to each such party. In a case randomly assigned upon filing to a magistrate judge as the presiding trial judge, the provisions of Rule 83.3 shall govern.
  - (2) The Consent Form contemplated by subsection (c)(1) of this rule shall be in such form as the judges of the court from time to time direct. In addition, the clerk shall maintain on hand, in a form or forms to be approved by the judges of the court, written consent agreements for the use of the parties in communicating to the clerk their unanimous and voluntary consent, upon entry of an order of reference by the presiding district judge, to have all further proceedings in the case, including trial with or without a jury, and the entry of judgment, conducted by a United States Magistrate Judge.
  - (3) If the parties in any civil case unanimously consent to disposition of the case by a United

States Magistrate Judge pursuant to 28 U.S.C. § 636(c) and this rule, such consent must be communicated to the clerk on an appropriate form (provided by the clerk in accordance with subsection (c)(2) of this rule). The clerk shall not accept or file any consent except in the form and manner, and within the time, prescribed by this rule.

- (4) In the event the parties file a unanimous consent pursuant to subsection (c)(3) of this rule, the clerk shall immediately notify the presiding district judge who will promptly (1) enter an order of reference to a United States Magistrate Judge, or (2) enter an order declining to do so; provided, however, the district judges of the court shall not decline to make an order or orders of reference for the purpose of limiting the types of cases to be tried by the United States Magistrate Judges pursuant to this rule. In making or in declining to make an order of reference the presiding district judge may consider, among other things, the current allocation of pending judicial business between the district judges of the court and the magistrate judges; the judicial economy, if any, to be gained by the reference as measured in part by the extent of prior judicial labor expended and familiarity accumulated in the case by the district judge or the magistrate judge, as the case might be; the extent to which the magistrate judge(s) may have time available to devote to the case giving due regard to the necessity of diligent performance of other judicial duties regularly assigned to the magistrate judges; and any other features peculiar to the individual case which suggest, in the interest of justice or judicial economy, that a reference should or should not be made.
  - (5) In any case in which an order of reference has been made, the presiding district judge may, for cause shown on his own motion, or under extraordinary circumstances shown by any party, vacate the order of reference and restore the case to the calendar of the presiding district judge.
- (d) Misdemeanor Jurisdiction. Pursuant to 18 U.S.C. § 3401, the United States Magistrate Judges for this district, sitting with or without a jury, are specifically designated and shall have jurisdiction to try persons accused of, and sentence persons convicted of, petty offenses.

With consent of the parties, any of the United States Magistrate Judges for this district, sitting with or without a jury, shall have jurisdiction to try persons accused of, and sentence persons convicted of Class A misdemeanors committed within the district whether originating under an applicable federal statute or regulation or a state statute or regulation made applicable by 18 U.S.C. § 13. Cases of Class A misdemeanors may, upon transfer into this district under Rule 20, Fed. R. Crim. P., be referred to a United States Magistrate Judge for this district for plea and sentence, upon defendant's consent.

In a petty offense case involving a juvenile, the United States Magistrate Judges for this district may exercise all powers granted to the district court under Chapter 403 of Title 18 of the United States Code. In cases of any misdemeanor, other than a petty offense involving a juvenile, in which consent to trial before a magistrate judge has been filed, a magistrate judge may exercise all powers granted to the district court under Chapter 403 of Title 18 of the United States Code.

In the trial of all cases pursuant to this subparagraph, Rule 58, Federal Rules of Criminal Procedure, governs practice and procedure.

- (e) Duties under 28 U.S.C. § 636(e) Contempt Authority. Pursuant to 28 U.S.C. § 636(e), the United States Magistrate Judges for the district are hereby specially designated and shall have jurisdiction to conduct contempt proceedings and exercise the contempt authority as set forth in 28 U.S.C. § 636(e).
- (f) Duties as to Pretrial Matters in Civil Cases. Pursuant to authority granted under subsection (b)(17) of this rule, the United States Magistrate Judges for this district shall, upon order of reference, hear and determine all non-dispositive motions including, without limitation, all procedural and discovery motions and shall conduct Rule 16(b) conferences, setting all deadlines and trial date, in coordination with the presiding trial judge's staff in all cases. Except in those cases which are excluded by Local Rule 16.1(b), the United States Magistrate Judges for the district shall conduct settlement conferences pursuant to the authority granted in subsection (b)(27) of this rule only after parties have engaged in private mediation. The parties must present a certificate from a private mediator that at least one mediation was held and the parties participated in good faith before the presiding trial judge will refer a case to the magistrate judge for a settlement conference.
- (g) Appeals from or Objections to Magistrate Judges' Decisions.
  - (1) An appeal from an order of a magistrate judge determining a pretrial matter shall be filed with the clerk and served on opposing counsel within fourteen days after being served with a copy of the order. The presiding district judge may reconsider any order determining a pretrial matter where it has been shown that the magistrate judges' order is clearly erroneous or contrary to law.
  - (2) In any case in which the magistrate judge is not authorized to enter a determination pursuant to 28 U.S.C. § 636 or any standing or special order of the court entered thereunder, but is authorized or directed to submit proposed findings of facts and recommendations to the district judge to whom the case has been assigned, a copy of such proposed findings of facts and recommendations shall be furnished, upon filing, to the district judge and to all parties. Within fourteen (14) days after such service, any party may file and serve written objections thereto. The district judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The district judge may accept, reject, or modify in whole or in part, the findings and recommendation of the magistrate judge. The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.
  - (3) Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under 28 U.S.C. § 636(c), an aggrieved party may appeal directly to the

United States Court of Appeals for the Sixth Circuit in the same manner as an appeal from any other judgment of this court.

- (4) The appeal of an order of contempt issued by a magistrate judge for this district shall be made to the United States Court of Appeals for the Sixth Circuit in cases proceeding on consent of the parties under 28 U.S.C. § 636(c). The appeal of any other order of contempt issued by a magistrate judge for this district shall be made to the district court.
- (h) No limitation. Nothing in this rule shall be construed to limit or affect the right of any judge or judges of the court to assign judicial duties or responsibilities to a United States Magistrate Judge with or without the consent of the parties.

#### **LR77.1**

### **PLACES OF HOLDING COURT**

- ~~(a) Organization of Court. The Western District of Tennessee contains a Western Division, for which the places of holding court are Memphis and (under the limited circumstances set forth in subparagraph (d) below) Dyersburg, and an Eastern Division, for which the place of holding court is Jackson. Both divisions of the court shall be in continuous session on all business days throughout the year.~~
- ~~(b) Divisions. The work of the court is comprised of cases arising in or related to the following counties:~~
- ~~(1) Western Division: Fayette, Lauderdale, Shelby, and Tipton.~~
- ~~(2) Eastern Division: Benton, Carroll, Chester, Crockett, Decatur, Dyer<sup>7</sup>, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry and Weakley.~~
- ~~(c) Venue in Civil Cases, Generally. Except as otherwise provided below, a civil action against a single defendant residing in the district must be brought in the division where the defendant resides, and civil action against multiple defendants residing in different divisions of this district may be brought in either division.~~
- ~~(1) Local Actions. A civil action of a local nature shall be brought in the division in which the real property involved in the action is located.~~
- ~~(2) Non-Resident Defendants. If no defendant resides in this district, the action shall be filed in either~~

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<sup>7</sup> Pursuant to the Judicial Administration and Technical Amendments Act of 2008, signed October 13, 2008, Dyer County was moved from the Western Division to the Eastern Division.

- ~~(A) the division in which any plaintiff resides, or~~
- ~~(B) the division in which the cause of action arose or the event complained of occurred.~~
- ~~(3) Corporations. For the purpose of this rule, a corporation shall be deemed to be a resident of the county in this district in which it has its principal place of business. If it has no operation that can be deemed to be a principal place of business in this district, the corporation shall be deemed to be a resident of both divisions, but if the cause of action arose in one of the divisions, the action shall be filed in that division.~~
- ~~(d) Dyersburg. Only non-jury cases will be tried at Dyersburg, Tennessee. Counsel for a party to a non-jury civil action pending in the Western Division who desires that the action be tried at Dyersburg must file, within fourteen days after an answer has been filed to each asserted claim, a request that the action be placed on the Dyersburg trial docket. The request must set out the reasons for the request and must contain a certificate that it has been served on all parties to the action. A response to the request must be filed not later than fourteen days after the request is served; the response must state the reasons for objection to the request, if any, and must contain a certificate that it has been served on all parties. Requests and responses shall be separately filed and shall not be included in other pleadings. The court will rule on such requests without argument. The court on its own motion may place civil non-jury cases on the Dyersburg docket from either division of the court.~~

**LR 77.2**  
**CLERK OF COURT**

- (a) Legal Advice. The Clerk and the Clerk's employees desire to be of help to litigants and attorneys. However, interpreting the Rules of Procedure and giving legal advice are not permitted functions. Notice is hereby given to litigants and attorneys that the Clerk and the Clerk's employees assume no responsibility for information respecting applicable procedural rules, substantive law, or interpretation of these rules.
- (b) Advance Payment of Filing Fees.
- (1) Payment of Fees. The Clerk shall require advance payment of fees before any civil action, suit, or proceeding (other than those authorized to be brought *in forma pauperis*) is filed.
- (2) When Fee Not Included. When a pleading is received for filing and is unaccompanied by either the required filing fee or an application to proceed *in forma pauperis*, or is accompanied by an application to proceed *in forma pauperis* that has not been acted upon by the Court, then the Clerk shall note "received" and the date received thereon and immediately notify counsel or the party who submitted the pleading that the pleading is held but not filed pending receipt of the required filing fee or an order granting an application to proceed *in forma pauperis*.

**LR 79.1**  
**REMOVAL OF COURT FILES**

- (a) Removal of original papers. Original papers in the custody of the clerk shall be removed from the clerk's office only upon order of the court, upon terms approved by the Clerk of Court, provided, however, that judicial officers and their staffs, official court reporters, special masters or commissioners may remove original papers as necessary to expedite the business of the court. Persons seeking to remove such papers shall do so only with approval of the Court.
- (b) Exhibits. All exhibits received or marked for identification at any hearing shall be delivered to the clerk, who shall keep them in his custody. However, any narcotics, cash, counterfeit notes, weapons, precious stones or other contraband received, and any other exhibits which because of size or nature require special handling shall remain in possession of the party introducing the exhibit during the pendency of the action.  
After the final determination of any action, counsel shall have 30 days within which to withdraw exhibits in the clerk's custody. In the event the exhibits are not so withdrawn, the clerk shall destroy or otherwise dispose of said exhibits.

**LR 80.1**  
**COURT REPORTERS AND TRANSCRIPTS**

- (a) Payment for Transcripts. Any party or attorney ordering a transcript of testimony, whether for appeal or otherwise, is personally obligated for the payment of the fee to the court reporter. However, the foregoing does not apply to those instances in which the fees are to be paid by the United States of America pursuant to legislative authority. Except in those cases in which the cost of a transcript is funded pursuant to the Criminal Justice Act, the court reporter may require prepayment for a transcript ordered by an attorney.
- (b) Clerk's Copy. The certified copy of the transcript delivered by the court reporter to the Clerk for the records of the Court, as required by 28 U.S.C. § 753, may not be removed from the office of the Clerk absent Court order.
- (c) Electronic Availability of Transcripts. The electronic availability of transcripts of proceedings shall be controlled by Admin. Orders 2008-35 and 2009-09.

**LR 83.1**  
~~**ATTORNEYS**~~  
**BANKRUPTCY APPEALS**

- (a) Appeals. Bankruptcy appeals shall be handled in accordance with L.B.R. 8000-1 and L.B.R. 8006-1.
- (b) Oral Argument. Oral argument is not permitted absent a specific order of the Court.

- (c) Bankruptcy Appeals Panel. The Western District of Tennessee has adopted the use of the Bankruptcy Appeals Panel. Any rules of the Bankruptcy Appeals Panel shall supersede these rules for such appeals.

**LR83.2**

**~~CIVIL PRO BONO PANEL FOR PRO SE INDIGENT PARTIES~~**

~~In order to encourage greater representation of *pro se* indigent parties in civil cases, the court has adopted the “Plan for the Appointment of Counsel for *Pro Se* Indigent Parties in Civil Cases of the United States District Court for the Western District of Tennessee,” (the Plan) pursuant to Administrative Order No. 98-17, filed May 28, 1998. This Plan is applicable district-wide, and is in effect to: increase the number of attorneys on the Civil Pro Bono Panel; govern the appointment of counsel from the Panel; allow for reimbursement of expenses from the *Pro Bono* Expense Fund; and, establish guidelines for such reimbursement. A copy of the Plan is available at the Clerk’s Office and on the Court’s website at: [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).~~

**LR 83.2**

**PHOTOGRAPHING, BROADCASTING, TELEVISIONING AND TELEPHONY**

- (a) The taking of photographs or the recording or transmission of Court proceedings or the airing of radio, television or internet broadcasts by non-Court personnel from the floors of the Courthouse occupied by the Courts during the progress of or in connection with judicial proceedings or grand jury proceedings, including proceedings before a Magistrate Judge, whether or not Court is actually in session, are prohibited; provided that photographing and broadcasting in connection with naturalization hearings, ceremonial occasions, or other special proceedings may be permitted with the approval of the Judge of the Court presiding over such proceedings.
- (b) Cellular telephones and personal digital assistants shall be turned off while in any courtroom or chambers of the Court, unless the Court expressly allows them to be activated.
- (c) Devices and equipment used in violation of this rule shall be subject to immediate seizure.

**LR83.3**

**~~ASSIGNMENT OF CASES~~**

- ~~(a) Initial Assignment of Cases<sup>8</sup>. Unless otherwise ordered, cases in the Western District shall be~~

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<sup>8</sup> This section was modified in accordance with Admin. Order 2009-20 of October 21, 2009, to reflect that the initial case assignment system is used in both divisional offices of the Western

assigned according to the following rules:

- ~~(1) Upon the filing of a complaint, the clerk shall assign each civil case, except bankruptcy appeals, cases requesting temporary restraining orders or other preliminary injunctive relief, habeas corpus cases, § 2255 and § 2254 cases, pro se<sup>9</sup> cases, in rem forfeiture cases<sup>10</sup>, and death penalty cases to either a district judge or a magistrate judge, as the presiding trial judge, by random selection using a system that insures that assignments are made on a random basis, without consideration of the identity of the judge in making the assignment. For each case assigned to a district judge as presiding judge, a magistrate judge will also be assigned to hear and decide non-dispositive pretrial and discovery matters. Unless otherwise ordered, Eastern Division cases will be assigned only to either the district judge or the magistrate judge who currently sits in Jackson as the presiding judges.~~
- ~~(2) Case assignments to the magistrate judges as presiding judges shall be made in such proportion as determined by the district judges from time to time giving due consideration to the existing caseload of the judges. The magistrate judge sitting in Jackson shall receive a proportionate amount of the Western Division cases which amount, when combined with cases assigned in the Eastern Division, will maintain parity among the magistrate judges.~~
- ~~(3) The clerk shall use the same assignment system to make assignments to each senior district judge in accordance with the rules applicable to senior judge status, subject to the number and type of cases set by the senior judge (consent of senior judge required):~~
- ~~(4) In a case assigned to a presiding magistrate judge, the clerk will provide the plaintiff and/or plaintiff's counsel upon the filing of the complaint and each defendant and/or defendant's counsel at the time of their first appearance a "Notice of Assignment" and a "Consent or Non-consent to the Exercise Of Jurisdiction by a United States Magistrate Judge Where the Magistrate Judge Has Been Directly Assigned as the Presiding Judge" form ("Consent Form"). Each party is required to email the completed Consent Form to the clerk noting their consent or objection to proceeding before the magistrate judge. If at the time of the Rule 16(b) scheduling conference, all Consent Forms have not been submitted, the assigned magistrate judge shall proceed with the scheduling conference. The magistrate judge shall remind the parties that the written Consent Forms must be emailed to the clerk and shall inform the parties that a district judge will be randomly~~

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District of Tennessee and to permit referral of certain cases to a magistrate judge for reports and recommendations.

<sup>9</sup> This section was modified effective September 25, 2007. The expression "prisoner pro se" has been changed to "pro se."

<sup>10</sup> This section was modified effective December 11, 2007 to include "*in rem* forfeiture cases."

assigned if the Consent Forms are not submitted to the clerk within fourteen (14) days after the scheduling conference. A party's failure to submit the completed Consent Form timely will be considered that party's refusal of consent to proceed before the assigned presiding magistrate judge. In that event or in the event a party explicitly or implicitly refuses consent, the presiding magistrate judge will be replaced by a randomly assigned district judge.

- ~~(5) While the decision to consent or not to consent to the exercise of jurisdiction by the magistrate judge is entirely voluntary, the duty to file the Consent Form is mandatory. Consent to a magistrate judge's authority does not constitute a waiver of any jurisdictional defense unrelated to the grant of authority under 28 U.S.C. § 636(c). No adverse consequences of any kind will befall any attorney or party who refuses to consent. A party's completed Consent Form will not be docketed or made part of the electronic case file nor will the magistrate judge be advised of a party's consent or refusal to consent if less than all the parties consent.~~
- ~~(6) If the parties consent to proceed before the assigned presiding magistrate judge, the assigned presiding magistrate judge will conduct all dispositive proceedings in the action, including trial, and order the entry of final judgment. The appeal of a judgment or final order entered by the presiding magistrate judge will be to the United States Court of Appeals for the Sixth Circuit.~~
- ~~(7) If the case has been randomly assigned to a district judge and all parties consent to have a magistrate judge conduct all proceedings, the magistrate judge already assigned to the case will become the presiding judge, and the district judge may enter an order transferring the case to the magistrate judge.~~
- ~~(8) If parties are later added to the case, these parties will be afforded notice and opportunity to consent to the magistrate judge. Each party added after the scheduling conference will be required to return the completed Consent Form noting their consent or objection to proceeding before the magistrate judge within fourteen (14) days after service of the notice of assignment and the Consent Form.~~
- ~~(b) Assignment of Dismissed or Re-Filed Cases. In the event a case is dismissed and then re-filed at a later date, the judge(s) to whom the original case was assigned will be assigned the re-filed case.<sup>11</sup>~~
- ~~(c) Assignment of Companion Civil Cases. Counsel shall inform the clerk whenever companion cases appear to be assigned to different judges. The complaint shall be examined in the more recent action and it shall be determined whether the case is companion to or likely to be tried with~~

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<sup>11</sup> See also LR7.2 (f)(4).

~~one already pending. If it is called to the clerk's attention, via the required civil cover sheet (JS-44), upon the filing of an action that the case is a companion to a pending action, the clerk shall assign the case to the judge before whom the original companion action is pending without utilizing the random assignment system. For purposes of this subsection, a companion case includes, but is not limited to, a case arising from or related to the same transaction, condition, or occurrence as another pending case.~~

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~~(1) If the magistrate judge is the presiding judge in the pending case, all parties in the more recently filed companion case must also consent to the magistrate judge. In the event all parties in the more recently filed companion case fail or refuse to consent, the presiding magistrate judge in the more recently filed companion case will be replaced by a randomly assigned district judge.~~

~~(d) Exchange of Cases Between Judges. Unless otherwise ordered, case assignments may be exchanged as follows:~~

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~~(1) When a judge has been assigned a case in accordance with these rules and is of the opinion that he or she should not preside in the case, such judge may, by mutual consent with one of the other judges of this district, transfer the case, unless the recusing judge determines to return the case to the Clerk for random reassignment. The judge to whom the case is transferred may select a comparable case assigned to him or her and transfer it to the judge from whom the transferred case was received.<sup>12</sup> If the parties have already consented to the magistrate judge as the presiding judge, then the transfer or reassignment will be to another magistrate judge.~~

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~~(2) If a matter demands immediate judicial determination (such as a temporary restraining order or a motion pertaining to bail) and the judge to whom the case is assigned is not reasonably available, then the party seeking the action shall contact the clerk, who will arrange for another judge to hear the matter. Handling of a matter under such circumstances does not constitute a permanent reassignment of the case.~~

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~~(3) For such other good cause and in such other manner as the court may direct.~~

#### **LR 83.4 ATTORNEYS - ADMISSION**

~~(a) Admission. The bar of this court shall consist of all present members and those attorneys admitted in the future to practice before this court. Any person is eligible for membership who is licensed to practice law and is a member in good standing of the bar of the Supreme Court of any State or of the District of Columbia. Admission shall be made either (a) on motion in open court~~

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<sup>12</sup> LR 83.3 (d) (1) amended by Administrative order No. 2001-02, filed January 30, 2001.

~~by a member in good standing of the bar of this court or (b) by written application, written sponsor's motion, a written notarized oath and the payment of any required fee without any personal appearance. The applicant, if admitted, shall take the prescribed oath and pay the required fee. Upon completion of all requirements for admission, the court will enter an order of admission. The admittee's name and Board of Professional Responsibility number shall be inscribed on the roll of attorneys, and a certificate of admission may be issued upon application.~~

(a) Roll of Attorneys. The bar of this Court shall consist of all present members and those attorneys admitted in the future to practice before this Court who have taken the oath prescribed by the rules and have paid to the Clerk such fees as the Court may prescribe from time to time. No person, unless duly admitted to practice in this Court shall be permitted to appear and participate in the trial of any action or hearing of any motion except in his or her own behalf or by special permission of the Court or as provided in section (d) of this rule.

~~(b) Permission to Participate in a Particular Case. An attorney not licensed to practice law in the State of Tennessee, but who is licensed to practice and is in good standing at the bar of the highest court of any other state or of any federal district court, may be admitted specially for the purpose of acting as attorney in a case in this court. Any attorney seeking special admission is subject to the following rules and requirements:~~

~~(1) An attorney seeking to participate in a particular case under this subsection shall file a written motion, including the attorney's Board of Professional Responsibility number and current address and telephone number, along with (a) a certificate of good standing from the highest court of a state or from a federal district court, (b) a certificate that the attorney has obtained and is familiar with the local rules of this court, including the Guidelines of Professional Courtesy and Conduct, and (c) a proposed order of special admission. (See ECF Polices and Procedures Section 3.1)~~

~~(2) An attorney may be provisionally admitted for a particular case on oral motion without the required written motion and certificates in order to participate in initial preliminary matters, such as an arraignment, but such attorney must comply with the preceding paragraph within fourteen days of being provisionally admitted.~~

~~(3) Failure to comply with local rules, failure to keep the clerk advised of a current address and telephone number, failure to attend scheduled conferences, hearings and other proceedings, or any misconduct shall be grounds for rescinding an order of special admission.~~

(b) Eligibility. Any person is eligible for membership who is admitted to practice law and in good standing before the Supreme Court of Tennessee, any other state, or the District of Columbia. If the applicant is not a member of the bar of Tennessee, he or she must also be a member in good standing of a United States District Court.

~~(c) Appearance in Criminal Cases. An attorney retained by a defendant in a criminal case and assistant United States attorneys shall file a written notice of appearance, including the attorney's~~

~~Board of Professional Responsibility number, stating that the attorney will serve as counsel of record. For defense counsel, notice must be filed within four days after being retained or within four days after process is served on the client, whichever occurs later. In the case of a pro hac vice appearance, defense counsel shall comply with the requirements of subsection (b)(1) above.~~

~~As to assistant United States attorneys, notice must be filed within four days of the return of indictment, or initial appearance, or unsealing of indictment, whichever last occurs. All notices must bear a certificate of service on opposing counsel. The provisions of this rule apply to attorneys who appear as substitute counsel and to those who appear as co-counsel to an attorney already appearing as counsel of record.~~

(c) Procedure for Admission. Each applicant for admission to the bar of this Court shall file with the Clerk a written petition setting forth: (a) the attorney's Board of Professional Responsibility number (or similar number, if any, from the admittee's state of licensure) and current address and telephone number, along with; (b) a certificate of good standing from the highest court of his or her state or the District of Columbia and, if not a member of the bar of Tennessee, from a United States District Court. Admission then shall be obtained only on motion made by a member in good standing of the bar of this Court. The applicant, if admitted, shall take the prescribed oath, pay the required fees and certify that he or she subjects himself or herself to the jurisdiction of the Court and has obtained, is familiar with and agrees to be bound by these Local Rules, Tennessee Supreme Court Rule 8 (Rules of Professional Conduct), and the Guidelines of Professional Courtesy and Conduct (at APPENDIX C). Upon completion of all requirements for admission, the Court shall enter an order of admission. The admittee's name and Tennessee Board of Professional Responsibility number (or similar number, if any, from the admittee's state of licensure) shall be inscribed on the roll of attorneys, and a certificate of admission may be issued upon application.

~~(d) Effect of Appearance as Counsel. By appearing in this court or before a magistrate judge in a proceeding representing a client, an attorney represents to this court, unless he or she affirmatively advises the court to the contrary, that the attorney has complied with (a) or (b) above and is not currently under a disbarment or suspension from any other court. A party represented by counsel who has appeared in a case may not act on his or her own behalf unless that party's attorney has obtained leave of the court to withdraw as counsel of record, provided that the court may, in its discretion, hear a party in open court, notwithstanding the fact that the party is currently represented by counsel of record.~~

(d) Permission to Participate in a Particular Case. An attorney not licensed to practice law in the State of Tennessee, but who is licensed to practice and is in good standing at the bar of the highest court of any other state or the District of Columbia may be admitted specially for the purpose of acting as attorney in a case in this Court. Any attorney seeking special admission is subject to the following rules and requirements:

(1) An attorney seeking to participate in a particular case under this section (d) shall file a written

motion, including the attorney's license number, if any, from the attorney's state of licensure, and current residence and office addresses and office telephone number, along with:

(A) a certificate of good standing from the highest Court of a state or the District of Columbia, and from a United States District Court, and

(B) a certificate that the attorney subjects himself or herself to the jurisdiction of the Court and has obtained, is familiar with and agrees to be bound by these Local Rules, Tennessee Supreme Court Rule 8 (Rules of Professional Conduct), and the Guidelines of Professional Courtesy and Conduct (at APPENDIX C), and

(C) a proposed order of special admission.

(2) An attorney may be provisionally admitted for a particular case on oral motion without the required written motion and certificates in order to participate in initial preliminary matters, but such attorney must comply with the preceding subsection (d) (1) within 15 days of being provisionally admitted.

(3) Failure to comply with these rules, failure to keep the Clerk advised of a current address and telephone number, failure to attend scheduled conferences, hearings and other proceedings, or any misconduct shall be grounds for rescinding an order of special admission.

~~(e) Conduct. All attorneys practicing before the United States District Court for the Western District of Tennessee shall comply with the Code of Professional Responsibility as then currently promulgated and amended by the Supreme Court of Tennessee, except that prior court approval as a condition to the issuance of a subpoena addressed to an attorney shall not be required, as specified in Tenn. S. Ct. R. 8, DR 7-103,(c) and with the Guidelines for Professional Courtesy and Conduct as adopted by this court. (A copy of the Guidelines is available in the office of the Clerk of the United States District Court for the Western District of Tennessee and on the Court's website at : [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov))~~

~~(1) For a willful violation of the said Code or these Rules, an attorney is subject to appropriate disciplinary action by the court in accordance with the procedures contained in this court's Order Adopting Rules of Disciplinary Enforcement (filed 9/29/1980; copy available in clerk's office), as amended from time to time.~~

~~(2) If any attorney is convicted of or pleads nolo contendere to a felony or is disbarred from practice in any state or federal court, such attorney's right to practice in this court shall be suspended immediately and may be restored only after application and hearing in accordance with the procedures contained in this court's Order Adopting Rules of Disciplinary Enforcement (filed 9/29/1980; copy available in clerk's office), as amended from time to time.~~

- (e) Appearance in Criminal Cases. An attorney retained by a defendant in a criminal case and assistant United States attorneys shall file a written notice of appearance, including the attorney's Board of Professional Responsibility number, stating that the attorney will serve as counsel of record. For defense counsel, notice must be filed within 4 days after being retained or within four days after process is served on the client, whichever occurs later. In the case of a pro hac vice appearance, defense counsel shall comply with the requirements of subsection (d)(1) above.

As to assistant United States attorneys, notice must be filed within four days of the return of indictment, or initial appearance, or unsealing of indictment, whichever last occurs. All notices must bear a certificate of service on opposing counsel. The provisions of this rule apply to attorneys who appear as substitute counsel and to those who appear as counsel to an attorney already appearing as counsel of record.

- ~~(f) Courtroom Attire. All attorneys appearing in this court shall be appropriately attired, coat and tie for men, comparable attire for women, and shall not be groomed or attired in a manner reasonably calculated to distract attention from the proceedings, call attention to themselves, or as to show disrespect to the court.~~

- (f) Effect of Appearance as Counsel. By appearing in this Court or before a Magistrate Judge in a proceeding representing a client, an attorney represents to this Court, unless he or she affirmatively advises the Court to the contrary, that the attorney has complied with (c) or (e) above and is not currently under a disbarment or suspension from any other court. A party represented by counsel who has appeared in a case may not act on his or her own behalf unless that party's attorney has obtained leave of the Court to withdraw as counsel of record, provided that the Court may, in its discretion, hear a party in open Court, notwithstanding the fact that the party is currently represented by counsel of record.

- ~~(g) Criminal Cases. Counsel accepting employment in criminal cases in this district shall be aware of and comply with the requirements of the Speedy Trial Act and all plans adopted by the district under its provisions.~~

- (g) Conduct and Discipline. All attorneys practicing before the United States District Court for the Western District of Tennessee shall comply with these Local Rules, the Rules of Professional Conduct as then currently promulgated and amended by the Supreme Court of Tennessee, and with the Guidelines for Professional Courtesy and Conduct as adopted by this court (APPENDIX C).

(1) For a willful violation of the said Code or these Rules, an attorney is subject to appropriate disciplinary action by the Court in accordance with the procedures contained in this Court's Order Adopting Rules of Disciplinary Enforcement (filed 9/29/1980; copy available in clerk's office), as amended from time to time.

(2) If any attorney is convicted of or pleads nolo contendere to a felony or is disbarred from practice in any state or federal court, such attorney's right to practice in this Court shall be suspended immediately

and may be restored only after application and hearing in accordance with the procedures contained in this Court's Order Adopting Rules of Disciplinary Enforcement (filed 9/29/1980; copy available in clerk's office), as amended from time to time.

~~(h) **Withdrawal.** No attorney of record may withdraw in any case except on written motion and court order. All motions for leave to withdraw shall include the reasons requiring withdrawal and the name and address of any substitute counsel. If the name of substitute counsel is not known, the motion shall set forth the name, address and telephone number of the client, as well as the signature of the client approving the withdrawal or a certificate of service on the client. Ordinarily, withdrawal will not be allowed if withdrawal will delay the trial of the action.~~

#### **LR83.4**

### ~~**PHOTOGRAPHING, RECORDING AND BROADCASTING**~~

~~The use of cameras, video and sound tape recorders, and any video or sound transmitting devices shall not be permitted on any of the court floors above the second floor of the Clifford Davis/Odell Horton Federal Building<sup>13</sup> in Memphis and the main floor of the Ed Jones Federal Building and the United States Courthouse in Jackson, Tennessee. Exception to this prohibition can be obtained for special proceedings in response to written requests timely submitted to the judge presiding at the proceeding.~~

#### **LR83.5**

### ~~**CONTACTING JUDGES AND COURT PERSONNEL**~~ **ATTORNEYS- WITHDRAWAL FROM REPRESENTATION**

No attorney of record may withdraw in any case except on written motion and Court order. All motions for leave to withdraw shall include the reasons requiring withdrawal and the name and address of any substitute counsel. If the name of substitute counsel is not known, the motion shall set forth the name, address and telephone number of the client, as well as the signature of the client approving the withdrawal or a certificate of service on the client. Ordinarily, withdrawal will not be allowed if withdrawal will delay the trial of the action.

#### **LR83.6**

### ~~**CITATIONS OF CASES AND STATUTES**~~ **CONTACTING JUDGES AND COURT PERSONNEL**

~~When a case cited by counsel does not appear in a standard reporting series to which the court and~~

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<sup>13</sup> LR 83.4 amended by Administrative Order No. 2007-25, filed December 11, 2007.

~~opposing counsel could reasonably be expected to have access, counsel shall furnish a copy of the case to the court and opposing counsel. When a cited statute, regulation or ordinance is not contained in United States Code or the Tennessee Code Annotated, counsel shall furnish a copy of the statute, regulation or ordinance to the court and opposing counsel.~~

- (a) No Ex Parte Communication with Judges. Except as otherwise ordered, neither counsel nor a party to a pending action shall ~~have~~ **have** contact ~~the~~ **with a** judge ~~about a matter pending before whom the matter is pending that Judge,~~ **about a matter pending before** unless there is an emergency ~~and with reasonable notice to all counsel and unrepresented parties, orally or in open Court.,~~ **and with reasonable notice to all counsel and unrepresented parties, orally or in open Court.** ~~except by letter sent via email or, upon reasonable notice to all counsel and unrepresented parties, orally or in open court. A copy of all letters sent to a judge shall also be sent to all other counsel involved in the action (or any party acting *pro se*) and to the Clerk of the Court.~~
- (b) Law Clerks and Other Support Personnel. Except as may otherwise be directed by the court, neither counsel nor a party to a pending action shall discuss with law clerks or other support personnel the merits or other matters of substance relating to any pending action.

#### LR83.7

### **SUBMISSION OF COURT DOCUMENTS CIVIL PRO BONO PANEL FOR PRO SE INDIGENT PARTIES**

- ~~(a) (1) Filing Complaint by Attorney. See Local Rule 5.1 and Section II (B) (2) of the Western District of Tennessee ECF Attorney User Manual.~~
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- ~~(2) Filing Complaint by Pro Se Litigant. See Western District of Tennessee ECF Policies and Procedures Section 3.3.~~
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- ~~(3) Service of Process will not be issued upon the filing of a non-prisoner pro se complaint when a filing fee is paid pending review of the complaint's merit under Fed. R. Civ. P. 12 (b) (1) and 12 (h) (3), as to the validity of subject matter jurisdiction.~~
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- ~~(4) It is required that a Form JS-44 Civil Cover Sheet, available from the Clerk's Office or from the court's web site at [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov) be completed by plaintiff/plaintiff's counsel and submitted at the time of filing.~~
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- ~~(b) Other Pleadings and Documents. Pleadings and documents (other than complaints) shall contain a certification that a copy has been served on each counsel of record for a party (or on a party on whose behalf no attorney has appeared) and shall state the name of the person served, the address at which the person was served, and the manner of service.~~
- ~~(c) Orders. Proposed orders shall be sent in a word processing format to the ECF mailbox of the presiding judge. Proposed orders shall not be sent to the presiding judge's regular e-mail address.~~

- ~~(d) Federal Condemnation Cases. When the United States files separate land condemnation actions and concurrently files a single declaration of taking relating to those separate actions, the clerk is authorized to establish a master file so designated, in which the declaration of taking shall be filed, and the filing of the declaration of taking in the master file shall constitute a filing of the same in each of the actions to which it relates if reference is made to the separate actions in the declaration in the master file.~~
- ~~(e) Applications For Permission to File On Pauper's Oath. All applications for filing of civil actions in this district on pauper's oath shall be submitted along with the complaint. If the applicant is represented by counsel, counsel must affirm to the assigned judicial officer that counsel believes that the client in making the pauper's oath is in fact a pauper within the meaning of the law.~~
- ~~(f) Registration of Foreign Judgments. In addition to the instructions set out in 28 U.S.C. § 1963, a completed "Certification of Judgment for Registration in Another District" must be provided. This form is available at the Clerk's Office and on the Court's website at: [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).~~

In order to encourage greater representation of *pro se* indigent parties in civil cases, the court has adopted the "Plan for the Appointment of Counsel for *Pro Se* Indigent Parties in Civil Cases of the United States District Court for the Western District of Tennessee," (the Plan) pursuant to Administrative Order No. 98-17, filed May 28, 1998. This Plan is applicable district-wide, and is in effect to: increase the number of attorneys on the Civil Pro Bono Panel; govern the appointment of counsel from the Panel; allow for reimbursement of expenses from the *Pro Bono* Expense Fund; and, establish guidelines for such reimbursement. A copy of the Plan is available at the Clerk's Office and on the Court's website at: [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).

#### LR83.8

#### ~~SETTLEMENTS: NOTICE~~ ASSIGNMENT OF CASES

- ~~(a) Notice of Settlements. Whenever a case is settled or otherwise disposed of out of court, counsel for all parties shall promptly file a notice of settlement.~~
- ~~(b) Consequences of Late Notice in Civil Cases. Unless the clerk's office is notified that a settlement has been reached by 1:00 p.m. on the last full business day prior to the date the trial is scheduled, all costs incurred in having jurors report for service in connection with the case may be assessed by the court equally between the parties, or against one of the parties if it appears that the party was responsible for failure to give the required notice to the clerk. The clerk or deputy clerk receiving notice of a settlement orally or in writing shall immediately record on the docket sheet the receipt of notice of settlement and the date and time of receipt and initial the entry.~~
- (a) Initial Assignment of Cases<sup>14</sup>. Unless otherwise ordered, cases in the Western District shall be

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<sup>14</sup> This section was modified in accordance with Admin. Order 2009-20 of October 21, 2009, to reflect that the initial case assignment system is used in both divisional offices of the Western District of Tennessee and to permit referral of certain cases to a magistrate judge for reports and

assigned according to the following rules:

- (1) Upon the filing of a complaint, the clerk shall assign each civil case, except bankruptcy appeals, cases requesting temporary restraining orders or other preliminary injunctive relief, habeas corpus cases, §2255 and § 2254 cases, *pro se*<sup>15</sup> cases, *in rem* forfeiture cases<sup>16</sup>, and death penalty cases to either a district judge or a magistrate judge, as the presiding trial judge, by random selection using a system that insures that assignments are made on a random basis, without consideration of the identity of the judge in making the assignment. For each case assigned to a district judge as presiding judge, a magistrate judge will also be assigned to hear and decide non-dispositive pretrial and discovery matters. Unless otherwise ordered, Eastern Division cases will be assigned only to either the district judge or the magistrate judge who currently sits in Jackson as the presiding judges.
- (2) Case assignments to the magistrate judges as presiding judges shall be made in such proportion as determined by the district judges from time to time giving due consideration to the existing caseload of the judges. The magistrate judge sitting in Jackson shall receive a proportionate amount of the Western Division cases which amount, when combined with cases assigned in the Eastern Division, will maintain parity among the magistrate judges.
- (3) The clerk shall use the same assignment system to make assignments to each senior district judge in accordance with the rules applicable to senior judge status, subject to the number and type of cases set by the senior judge (consent of senior judge required).
- (4) In a case assigned to a presiding magistrate judge, the clerk will provide the plaintiff and/or plaintiff's counsel upon the filing of the complaint and each defendant and/or defendant's counsel at the time of their first appearance a "Notice of Assignment" and a "Consent or Non-consent to the Exercise Of Jurisdiction by a United States Magistrate Judge Where the Magistrate Judge Has Been Directly Assigned as the Presiding Judge" form ("Consent Form"). Each party is required to email the completed Consent Form to the clerk noting their consent or objection to proceeding before the magistrate judge. If at the time of the Rule 16(b) scheduling conference, all Consent Forms have not been submitted, the assigned magistrate judge shall proceed with the scheduling conference. The magistrate judge shall remind the parties that the written Consent Forms must be emailed to the clerk and shall inform the parties that a district judge will be randomly assigned if the Consent Forms are not submitted to the clerk within fourteen (14) days after the scheduling conference. A party's failure to submit the completed Consent Form timely will be considered that party's refusal of consent to proceed before the assigned presiding magistrate judge. In that event or in the event a party

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recommendations.

<sup>15</sup> This section was modified effective September 25, 2007. The expression "prisoner pro se" has been changed to "pro se."

<sup>16</sup> This section was modified effective December 11, 2007 to include "*in rem* forfeiture cases."

explicitly or implicitly refuses consent, the presiding magistrate judge will be replaced by a randomly assigned district judge.

- (5) While the decision to consent or not to consent to the exercise of jurisdiction by the magistrate judge is entirely voluntary, the duty to file the Consent Form is mandatory. Consent to a magistrate judge's authority does not constitute a waiver of any jurisdictional defense unrelated to the grant of authority under 28 U.S.C. § 636(c). No adverse consequences of any kind will befall any attorney or party who refuses to consent. A party's completed Consent Form will not be docketed or made part of the electronic case file nor will the magistrate judge be advised of a party's consent or refusal to consent if less than all the parties consent.
  - (6) If the parties consent to proceed before the assigned presiding magistrate judge, the assigned presiding magistrate judge will conduct all dispositive proceedings in the action, including trial, and order the entry of final judgment. The appeal of a judgment or final order entered by the presiding magistrate judge will be to the United States Court of Appeals for the Sixth Circuit.
  - (7) If the case has been randomly assigned to a district judge and all parties consent to have a magistrate judge conduct all proceedings, the magistrate judge already assigned to the case will become the presiding judge, and the district judge may enter an order transferring the case to the magistrate judge.
  - (8) If parties are later added to the case, these parties will be afforded notice and opportunity to consent to the magistrate judge. Each party added after the scheduling conference will be required to return the completed Consent Form noting their consent or objection to proceeding before the magistrate judge within fourteen (14) days after service of the notice of assignment and the Consent Form.
- (b) Assignment of Dismissed or Re-Filed Cases. In the event a case is dismissed and then re-filed at a later date, the judge(s) to whom the original case was assigned will be assigned the re-filed case.<sup>17</sup>
- (c) Assignment of Companion Civil Cases. Counsel shall inform the clerk whenever companion cases appear to be assigned to different judges. The complaint shall be examined in the more recent action and it shall be determined whether the case is companion to or likely to be tried with one already pending. If it is called to the clerk's attention, via the required civil cover sheet (JS-44), upon the filing of an action that the case is a companion to a pending action, the clerk shall assign the case to the judge before whom the original companion action is pending without utilizing the random assignment system.
- (1) If the magistrate judge is the presiding judge in the pending case, all parties in the more

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<sup>17</sup> See also LR7.2 (f)(4).

recently filed companion case must also consent to the magistrate judge. In the event all parties in the more recently filed companion case fail or refuse to consent, the presiding magistrate judge in the more recently filed companion case will be replaced by a randomly assigned district judge.

- (d) Exchange of Cases Between Judges. Unless otherwise ordered, case assignments may be exchanged as follows:
- (1) When a judge has been assigned a case in accordance with these rules and is of the opinion that he or she should not preside in the case, such judge may, by mutual consent with one of the other judges of this district, transfer the case, unless the recusing judge determines to return the case to the Clerk for random reassignment. The judge to whom the case is transferred may select a comparable case assigned to him or her and transfer it to the judge from whom the transferred case was received.<sup>18</sup> If the parties have already consented to the magistrate judge as the presiding judge, then the transfer or reassignment will be to another magistrate judge.
  - (2) If a matter demands immediate judicial determination (such as a temporary restraining order or a motion pertaining to bail) and the judge to whom the case is assigned is not reasonably available, then the party seeking the action shall contact the clerk, who will arrange for another judge to hear the matter. Handling of a matter under such circumstances does not constitute a permanent reassignment of the case.
  - (3) For such other good cause and in such other manner as the court may direct.

**LR83.9**  
**FILES AND EXHIBITS**

~~(a) Removal of original papers. Original papers in the custody of the clerk shall be removed from the clerk's office only upon order of the court, upon terms approved by the Clerk of Court, provided, however, that judicial officers and their staffs, official court reporters, special masters or commissioners may remove original papers as necessary to expedite the business of the court. Persons seeking to remove such papers shall do so only with approval of the Court.~~

~~(b) Exhibits. All exhibits received or marked for identification at any hearing shall be delivered to the clerk, who shall keep them in his custody. However, any narcotics, cash, counterfeit notes, weapons, precious stones or other contraband received, and any other exhibits which because of size or nature require special handling shall remain in possession of the party introducing the exhibit during the pendency of the action.~~

~~After the final determination of any action, counsel shall have thirty days within which to withdraw~~

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<sup>18</sup> LR 83.3 (d) (1) amended by Administrative order No. 2001-02, filed January 30, 2001.

~~exhibits in the clerk's custody. In the event the exhibits are not so withdrawn, the clerk shall destroy or otherwise dispose of said exhibits.~~

**LR 83.13**  
**SETTLEMENTS- NOTICE**

- (a) Whenever a case is settled or otherwise disposed of out of Court, counsel for all parties shall immediately file a notice of settlement and give immediate notice to the Clerk. Counsel for any party, or an unrepresented party, shall promptly submit an agreed order of dismissal before the date on which the case is set for trial or as otherwise directed by the Court. If the parties fail to comply with this rule, the Court may, in its discretion, enter an order dismissing the action.
- (b) Consequences of Late Notice in Civil Cases. Unless the Clerk's office is notified that a settlement has been reached by 1:00 p.m. on the last full business day prior to the date the trial is scheduled, all costs incurred in having jurors report for service in connection with the case may be assessed by the court equally between the parties, or against one of the parties if it appears that the party was responsible for failure to give the required notice to the Clerk. The Clerk or deputy Clerk receiving notice of a settlement orally or in writing shall immediately record on the docket sheet the receipt of notice of settlement and the date and time of receipt and initial the entry.

## CRIMINAL RULES

### LCrR12.1 MOTIONS IN CRIMINAL CASES

- (a) All non-substantive motions, including discovery motions, shall be accompanied by a certificate of counsel affirming that, after consultation between prosecution and defense counsel the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion. Failure to file attach such an accompanying certification of consultation may be deemed good grounds for denying the motion. Such motions shall be accompanied by a proposed order in a word processing format sent to the ECF mailbox only for the presiding Judge (do not send to regular e-mail address).<sup>19</sup> The certificate must contain the names of participating counsel and the date and manner of consultation. The burden will be on counsel filing the motion to initiate the conference. If opposing counsel or party refuses to cooperate in the conduct of a conference, counsel must file a certificate to that effect, setting out counsel=s efforts to comply with this rule.
- (b) Motions to suppress, for change of venue, to sever, and to dismiss shall be supported by a memorandum of law and facts submitted as an attachment to the motion. The title of the motion must state that it is both a motion and a memorandum.
- (c) If a party opposes a motion, it shall file a response within fourteen (14) days after the motion is received, which response shall contain a memorandum of law and facts. Failure to file a response will constitute a waiver of any objections which the party may have to a motion.
- (d) Memoranda in support of or in opposition to motions shall not exceed twenty pages without prior court approval.

### LCrR15 6.1 DISCOVERY PROCEDURES IN CRIMINAL CASES

Discovery procedures in criminal cases, pursuant to Fed. R. Crim. P. 16, will be as follows:

- (a) Within fourteen (14) days after arraignment, any attorney seeking discovery shall make such a request in writing addressed to the United States Attorney and filed with the Clerk of Court. The request shall state specifically what items are being requested for discovery.

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<sup>19</sup> LR12.1(a) amended by Administrative Order No. 2008-25 filed July 25, 2008.  
Amendments pursuant to Administrative Order 2008-25 effective August 25, 2008.

- (b) The United States Attorney shall respond in writing to the request for discovery within fourteen (14) days. The response shall include the following:
- (1) Identification of the date the request for discovery was received by the United States Attorney and the name of the attorney making the request.
  - (2) Specification of items, or reasonably specific categories of items, that are available for discovery. Copies of discoverable documents shall be enclosed with the response unless the number of such documents creates an unreasonable burden or expense, in which case the documents shall be made available for inspection and copying, at the defendant's expense, and the response shall indicate the time and place of the documents' availability. In addition, if discoverable items are not available in the United States Attorney's office, the United States Attorney shall notify any agents or witnesses who have control of the items of the necessity of making the items available for inspection and copying.
  - (3) A statement of the extent to which the United States Attorney seeks reciprocal discovery under Fed. R. Crim. P. 16(b).

~~A response, not including copies of enclosures, shall be filed with the Clerk of Court.~~

- (c)(1) If the United States Attorney requests reciprocal discovery, defense counsel shall respond in writing, affirmatively or negatively, to the United States Attorney at least seven days before trial. The response shall be filed with the Clerk of Court. The response shall conform to the procedure set forth above in 16 (b)(1)-(2). If, however, defense counsel is unable to provide a response within this time limit period, defense counsel shall email, to the ECF email box of the presiding judicial officer, at least seven days before trial an *ex parte* statement of reasons why this is not possible.
- (c)(2) Disclosure of Expert Witnesses: If the defendant intends to call an expert witness at trial, the defendant shall notify the United States Attorney in writing at least twenty-eight (28) days before trial of the existence of the expert witness and provide a copy of the expert witness's report or a summary of the expert witness's anticipated testimony. Only the written notification shall be filed with the Clerk of the Court via the Court's ECF system, while a copy of the expert's identification information and a copy of the expert's report or summary of the expert's anticipated testimony shall be delivered in writing to the United States Attorney.
- (c)(3) If the defendant is unable to provide a response within the time limits set in (c)(2), defense counsel shall e-mail, to the ECF box of the presiding judicial officer, at least twenty-eight (28) days before trial an *ex parte* statement of reasons why timely responses have not been possible.

~~LCrR24  
POST TRIAL INTERVIEWING OF JURORS IN CRIMINAL CASES~~

~~After Verdict. No attorney, party, or representative of either may interview a juror after the verdict has been returned without prior approval of the court. Approval of the court shall be sought only by an application of counsel in open court or upon written motion, either of which must state the grounds for and the purpose of the interview.~~

~~If post-verdict interview is approved, the court will determine the scope of any limitation on the interview prior to the interview.~~

~~After Mistrial. In the event a mistrial is ordered due to jurors' inability to agree on a verdict, any attorney or the attorney's representative may interview a juror without prior approval of the court, unless the court determines that the interview should not take place or determines that appropriate limitations should be established.~~

### **LCrR32.1 PROCEDURAL STEPS FOR SENTENCING**

The following procedures shall apply to all sentencings under the Sentencing Reform Act of 1984, as amended (28 U.S.C. § 991 *et seq.* and 18 U.S.C. § 3551 *et seq.*):

- (a) The district judge will schedule the hearing as soon as practicable but no earlier than sixty-five (65) days or later than ninety (90) days, following entry of a guilty plea, a plea of nolo contendere, or a verdict of guilty, unless good cause exists to schedule the sentencing at a different time.
- (b) The pre-sentence investigation report, including guideline computations, shall be completed by the probation officer and disclosed to the parties at least thirty-five (35) days prior to the scheduled sentencing proceeding, unless the minimum period is waived by the defendant. The report shall be deemed to have been disclosed when a copy is physically delivered or three days after a copy is mailed.
- (c) If a party reasonably disputes sentencing factors or facts material to sentencing, or seeks the inclusions of additional factors or facts material to sentencing, in the pre-sentence investigation report, it is the obligation of the complaining party to communicate such objection or request in writing to the probation officer within fourteen (14) days after receiving the presentence report and to seek administrative resolution of such factors or facts through opposing counsel and the United States Probation Office. This pre-sentence conference is mandatory except when sentencing factors or facts are not in dispute. Informal resolution of disputed factors or facts material to sentencing should be resolved--to the extent practicable-- through informal procedures, including telephone conferences.
- (d) Within twenty-one (21) days after disclosure of the pre-sentence investigation report to the parties, counsel for the defendant and the government shall file a pleading entitled "Position of Parties With Respect to Sentencing Factors." This pleading shall contain a written statement certifying

that the party has conferred with opposing counsel and with the United States probation officer in a good faith effort to resolve any disputed matters. The pleading shall also include notice of any factor important to the sentencing determination which is reasonably in dispute, in accordance with § 6A1.3 1 of the United States Sentencing Commission Guidelines Manual (11/1/91 or subsequent versions). If the sentencing hearing is expected to last more than thirty minutes or if the party anticipates presenting evidence through more than one witness, the pleading shall notify the court of this.

- (e) At least seven (7) days prior to the scheduled sentencing proceeding, the probation officer shall transmit to the sentencing judge the pre-sentence investigation report, including guidelines computations, and an addendum indicating any unresolved factual disputes or objections by the parties with respect to the application of the guidelines, and the probation officer's opinion concerning any disputed issues. Upon review of these materials, the sentencing judge will notify the parties if the court intends to consider a sentence outside the applicable guideline range on a ground not identified as a ground for ~~departure~~ variance either in the pre-sentence report or a pre-hearing submission. In this event, the sentencing judge will reset the sentencing hearing if necessary ~~to ensure reasonable notice~~.
- (f) At the sentencing hearing, the sentencing judge shall hear arguments and, if necessary for a resolution of the disputed issues, hear evidence. The sentencing judge shall then announce tentative findings under § 6A1.3(b) of the Guidelines Manual (11/1/91 or subsequent versions) and provide a reasonable opportunity for the submission of oral or written objections by either party prior to the imposition of sentence. For good cause shown the sentencing judge may continue the sentencing hearing for a reasonable time to allow any party an opportunity to present additional evidence or oral or written objections to the court's tentative findings. After hearing from counsel, parties, and witnesses, if necessary, in the sentencing hearing and any continuation thereof, the judge shall impose sentence.
- (g) The times set forth in this rule may be modified by the court for good cause shown, except that the ~~twenty-one~~ (21) day period set forth in paragraph (d) may be diminished only with the consent of the defendant.
- (h) Any party filing an appeal or cross-appeal in any criminal case in which it is expected that an issue will be asserted pursuant to 18 U.S.C. § 3742 concerning the sentence imposed by the court shall immediately notify the probation officer who shall then file with the clerk for inclusion in the record *in camera* (under seal) a copy of the pre-sentence investigation report.
- (i) The probation office will deliver to each lawyer or *pro se* party a copy of this rule on or before disclosure of the pre-sentence investigation report.

**LCrR32.2**

**PROBATION OFFICE RECORDS**

~~Except as otherwise provided by Rule 32 of the Federal Rules of Criminal Procedure, confidential records of the court maintained by the probation office, including presentence and probation supervision records, shall not be sought by any applicant except by written application to the court establishing with particularity the need for the information sought.~~

~~When a request for disclosure of presentence and probation records is made, by way of subpoena or other judicial process, to a probation officer of this court, the probation officer may file a petition seeking instructions from the court with respect to responding to the subpoena or other judicial process or for authority to release documentary records or produce testimony with respect to the confidential records and information.~~

~~In no event shall disclosure of confidential records and information of the probation office be made, except upon an order issued by the court, unless otherwise permitted by the Federal Rules of Criminal Procedure.~~